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Division of Administrative Rules, Salt Lake City 84114

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NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between May 2, 2008, 12:00 a.m., and May 15, 2008, 11:59 p.m. are included in this, the June 1, 2008, issue of the *Utah State Bulletin*.

In this publication, each PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least July 1, 2008. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63G-3-302 requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through September 29, 2008, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on PROPOSED RULES. *Comment may be directed to the contact person identified on the RULE ANALYSIS for each rule.*

PROPOSED RULES are governed by Section 63G-3-301; and Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

**Agriculture and Food, Regulatory
Services
R70-530
Food Protection**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 31380
FILED: 05/02/2008, 15:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to make the Department's food protection standards consistent with those used nationally. It incorporates the most recent science on food safety as reflected in the 2005 Food and Drug Administration (FDA) model food code which as approved at the Conference For Food Protection. The current rule was promulgated in 1999. Utah's food industries request this change to assure statewide uniformity of regulations.

SUMMARY OF THE RULE OR CHANGE: Changes include a focus to reduce food borne illness through a tiered approach of requirements outlining when to remove infectious employees and restriction of infectious employees from the workplace. Changes also emphasize the elimination of bare hand contact with food, and increasing hand washing. The hot holding temperature is changed from 140 deg F to 135 deg F. Reduced Oxygen Packaging requirements to extend the shelf life of food are added. The concept of time/temperature control for safety (TCS), which requires time and temperature controls for food safety, replaces the Potentially Hazardous Food concept. In specific situations, the shelf life of TCS foods is extended from 4 hours to 6 hours when time only is used as a control.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-5-17 and 21 CFR 1-200, 40 CFR 185, and 9 CFR 200

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: U.S. Public Health Service, Food and Drug Administration, Food Code 2005, Chapters 1 through 8, Annex 1, and Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402; and 21 CFR 1 through 200, April 1, 2008 edition; 40 CFR 185, July 1, 2007 edition; and 9 CFR 200 to End, January 1, 2008 edition

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There will be a minor impact on the department's budget, mostly for training of inspectors. Most of the training has already been completed.
- ❖ **LOCAL GOVERNMENTS:** Local health department will incur some minor training cost. Most of their training has already been completed.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Industry representatives report there are no identified costs or savings to them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Industry representatives on the Utah Food Code Committee, including the Utah Food Industry Association and the Utah Restaurant Association report no identified costs or savings with this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule revision is necessary to maximize resources in both government and private industry. All stakeholders requested these revisions, have been very involved in the process and fully support the proposal. Leonard M. Blackham, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3034, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kyle Stephens, Kathleen Mathews, or Richard W Clark at the above address, by phone at 801-538-7102, 801-538-7103, or 801-538-7150, by FAX at 801-538-7126, 801-538-7126, or 801-538-7126, or by Internet E-mail at kylestephens@utah.gov, kmathews@utah.gov, or RICHARDWCLARK@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Leonard M. Blackham, Commissioner

**R70. Agriculture and Food, Regulatory Services.
R70-530. Food Protection.**

[R70-530-1. Authority and Purpose.

— (1) Authority.

— Promulgated under the authority of the Section 4-5-17.

— (2) Purpose.

— This rule shall be liberally construed and applied to promote its underlying purpose of safeguarding public health and providing to consumers food that is safe, unadulterated, and honestly presented.

— (3) Scope.

— This rule establishes definitions; sets standards for management and personnel, food operations, equipment, and facilities; and provides for food establishment plan review, inspection, and employee restriction. It shall be used to regulate bakeries, grocery and convenience stores, meat markets, food and grain processors, warehouses and any other establishment meeting the definition of a food establishment.

— (4) Adopted by Reference.

— The division adopts the food standards, labeling requirements and procedures as specified in 21 CFR, 1 through 200, April 1, 1999 edition, 40 CFR 185, 1999 edition, and 9 CFR 200 to End, 1999 edition, which are incorporated by reference within this rule.

R70-530-2. Definitions.

— Definitions. Statement of Application and Listing of Terms.

— The following definitions apply in the interpretation and application of this rule:

— (1) Additive.

— (a) "Food additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(s) and 21 CFR 170.

— (b) "Color additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(t) and 21 CFR 70.

— (2) "Adulterated" has the meaning stated in the Wholesome Food Act, Section 4-5-7.

— (3) "Approved" means acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

— (4) "AW or A_w " means water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w .

— (5) "Beverage" means a liquid for drinking, including water.

— (6) "Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

— (7) "Bulk food" means unpackaged processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn. For the purpose of this interpretation, the term does not include unprocessed fresh fruits, unprocessed fresh vegetables, nuts in the shell, salad bars, and potentially hazardous foods.

— (8) "Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

— (9) CIP.

— (a) "CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution; water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize an enclosed beverage processing system.

— (b) "CIP" does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

— (10) "CFR" means Code of Federal Regulations which is a compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

— (a) Citations in this Code refer sequentially to the title, part, and section number, such as 21 CFR 178.1010 refers to Title 21 Part 178, Section 1010.

— (b) The CFR is published annually by the U.S. Government Printing Office; and

— (c) Contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, and EPA rules in 40 CFR.

— (11) Comminuted.

— (a) "Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing.

— (b) "Comminuted" includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and in a mixture of 2 or more types of meat that have been reduced in size and combined, such as sausages made from 2 or more meats.

— (12) "Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illness.

— (13) "Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

— (14) "Corrosion resistant materials" means a material that maintains acceptable cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

— (15) Critical control point.

— (a) "Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

— (b) "Critical control point" is an operation, practice, procedure, process, location, or step of an operation where a preventive or control measure can be exercised that will eliminate, prevent or minimize a hazard(s) that has occurred prior to this point.

— (16) "Critical item" means a provision of this rule that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard. Critical items are identified in the rule with an * (asterisk).

— (17) "Critical Limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

— (18) Drinking Water.

— (a) "Drinking Water" means water that meets 40 CFR Part 141 National Primary Drinking Water Regulations.

— (b) "Drinking Water" is traditionally known as "potable water".

— (c) "Drinking Water" includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water", "mop water", "rainwater", "wastewater", and "nondrinking" water.

— (19) "Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single service items.

— (20) Easily Cleanable.

— (a) "Easily cleanable" means a characteristic of a surface that:

— (i) Allows effective removal of soil by normal cleaning methods;

— (ii) Is dependent on the material, design, construction, and installation of the surface; and

— (iii) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

— (b) "Easily cleanable" includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in Subsection (a) of this definition to different situations in which varying degrees of cleanability are required such as:

— (i) The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables; or

— (ii) The need for a different degree of cleanability for a utilitarian attachment or accessory in the production area as opposed to a decorative attachment or accessory.

— (21) "Easily movable" means:

— (a) Weighing 14 kg (30 pounds) or less; mounted on casters, gliders, or rollers; or provided with a mechanical means requiring no

more than 14 kg (30 pounds) of force to safely tilt a unit of equipment for cleaning; and

— (b) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

— (22) "Employee" means the person in charge, person having supervisor or manager, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

— (23) "EPA" means the U.S. Environmental Protection Agency.

— (24) Equipment.

— (a) "Equipment" means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

— (b) "Equipment" does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

— (25) Fish.

— (a) "Fish" means fresh or saltwater finfish, crustaceans and other forms of aquatic life, including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals, other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

— (b) "Fish" includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

— (26) "Food" means a raw, cooked, or processed edible substance, water, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

— (27) Foodborne Disease Outbreak.

— (a) "Foodborne disease outbreak" means an incident, except as specified in Subsection (b) of this definition, in which:

— (i) 2 or more persons experience a similar illness after ingestion of a common food; and

— (ii) Epidemiological analysis implicates the food as the source of the illness.

— (b) "Foodborne disease outbreak" includes a single case of illness such as 1 person ill from botulism or chemical poisoning.

— (28) "Food contact surface" means:

— (a) A surface of equipment or a utensil with which food normally comes into contact; or

— (b) A surface of equipment or a utensil from which food may drain, drip, or splash:

— (i) Into a food; or

— (ii) Onto a surface normally in contact with food.

— (29) "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food contact surfaces.

— (30) "Food establishment" shall mean grocery store, bakery, candy factory, processor, bottling plant, sugar factory, cannery, rabbit processor, meat processor, flour mill, warehouse (cold or dry storage) and any other facility where food products are manufactured, canned, processed, packaged, stored, transported, prepared, sold or offered for sale. This rule shall not cover food service establishments, dairy farms or plants, or meat establishments under the official meat inspection program.

— (31) "Food service establishment" means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term may include convenience stores and delicatessens that offer prepared food in individual service portions. The term does not include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, and supply vehicles.

— (32) "Game animal" means an animal, the products of which are food, that is not classified as cattle, sheep, swine, or goat in 9 CFR Subchapter A—Mandatory Meat Inspection, part 301, as poultry in 9 CFR Subchapter C—Mandatory Poultry Products Inspection, part 381, as elk in Utah Code Annotated 4-32-4(3), or as fish.

— (33) "General use pesticide" means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175.

— (34) "Grade A standards" means the requirements of the USPHS/FDA "Grade A Pasteurized Milk Ordinance" and "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey" with which certain fluid and dry milk and milk products comply.

— (35) "HACCP Plan" means a written document that delineates the formal procedures for following the Hazard Analysis critical control point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

— (36) "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

— (37) "Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low-acid canned foods, to maintain the commercial sterility of its contents after processing.

— (38) "Highly susceptible population" means a group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day-care center.

— (39) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:

— (a) The number of potential injuries; and

— (b) The nature, severity, and duration of the anticipated injury.

— (40) "Injected" means manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as with juices which may be referred to as "injecting," "pinning," or "stitch pumping".

— (41) "Law" means applicable Local, State, and Federal statutes, ordinances, rules, and regulations.

— (42) "Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

— (43) "Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified under Subsection 4-2(1)(g) of this rule.

- (44) "mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).
- (45) "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.
- (46) Packaged.
- (a) "Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped whether packaged in a food establishment or a food service establishment.
- (b) "Packaged" does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.
- (47) "Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.
- (48) "Person in charge" means the individual present at the food establishment who is responsible for the operation at the time of inspection.
- (49) Personal Care Items.
- (a) "Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.
- (b) "Personal care items" include: items such as medicines; first aid supplies; and other items such as cosmetics; and toiletries such as toothpaste and mouthwash.
- (50) "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.
- (51) "Physical facilities" means the structure and interior surfaces of a food establishment including: accessories such as soap and towel dispensers; and attachments such as light fixtures and heating or air conditioning system vents.
- (52) "Plumbing fixture" means a receptacle or device that:
- (a) Is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or
- (b) Discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.
- (53) "Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water treating equipment.
- (54) "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in 4 categories:
- (a) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
- (b) Pesticides except sanitizers, which include substances such as insecticides and rodenticides;
- (c) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and
- (d) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.
- (55) Potentially Hazardous Food.
- (a) "Potentially hazardous food" means a food that is natural or synthetic and requires temperature control because it is in a form capable of supporting:
- (i) The rapid and progressive growth of infectious or toxigenic microorganisms;
- (ii) The growth and toxin production of *Clostridium botulinum*; or
- (iii) In shell eggs, the growth of *Salmonella enteritidis*.
- (b) "Potentially hazardous food" includes an animal food (a food of animal origin) that is raw or heat treated; a food of plant origin that is heat treated or consists of raw seed sprouts; cut melons, and garlic and oil mixtures that are not acidified or otherwise modified at a food establishment in a way that results in mixtures that do not support growth as specified under Subsection (a) of this definition.
- (c) "Potentially hazardous food" does not include:
- (i) An air cooled hard boiled egg with shell intact;
- (ii) A food with a a_w or water activity value of 0.85 or less;
- (iii) A food with a pH level of 4.6 or below when measured at 24 degrees C (75 degrees F);
- (iv) A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and
- (v) A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. enteritidis* in eggs or *C. botulinum* can not occur; such as a food that has an a_w and a pH that are above the levels specified under Subsections (c)(ii) and (iii) of this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or
- (vi) A food that does not support the growth of microorganisms as specified under Subsection (a) of this definition even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.
- (56) Poultry.
- (a) "Poultry" means:
- (i) Any domesticated bird; chickens, turkeys, ducks, geese, or guineas, whether live or dead, as defined in 9 CFR 381 Poultry Products Inspection Regulations; and
- (ii) Any migratory waterfowl, game bird, or squab such as pheasant, partridge, quail, grouse, or guineas, whether live or dead, as defined in 9 CFR 362 Voluntary Poultry Inspection Program.
- (b) "Poultry" does not include ratites.
- (57) "Premises" means:
- (a) The physical facility, its contents, and the contiguous land or property under the control of the owner of the food establishment; or
- (b) The physical facility, its contents, and the contiguous land or property not described under Subsection (a) of this definition if its facilities and contents are under the control of the owner of the food establishment and may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger organization such as a health care facility, hotel, motel, school, recreational camp, or prison.
- (58) "Primal cut" means a basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank or veal breast.
- (59) "Public water system" has the meaning stated in 40 CFR Part 141 National Primary Drinking Water Regulations.
- (60) Ready to Eat Food.

—(a) "Ready to eat food" means food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form.

—(b) "Ready to eat food" includes:

—(i) Potentially hazardous food that is unpackaged and cooked to the temperature and time required for the specific food by this rule;

—(ii) Raw, washed, cut fruits and vegetables;

—(iii) Whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and

—(iv) Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

—(61) **Reduced Oxygen Packaging.**

—(a) "Reduced oxygen packaging" means the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is 21% oxygen.

—(b) "Reduced oxygen packaging" includes methods that may be referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen, and vacuum packaging including sous vide.

—(62) "Refuse" means solid waste not carried by water through the sewage system.

—(63) "Regulatory authority" means the Utah Department of Agriculture and Food (UDAF) which has jurisdiction over the food establishment.

—(64) "Restricted-use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator.

—(65) "Safe material" means:

—(a) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;

—(b) An additive that is used as specified in Section 409 or 706 of the Federal Food, Drug, and Cosmetic Act; or

—(c) Other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

—(66) "Sanitization" means the application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for efficacy, yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

—(67) "Sealed" means free of cracks or other openings that allow the entry or passage of moisture.

—(68) "Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

—(69) "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

—(70) "Shellfish control authority" means a state, federal, foreign, tribal or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

—(71) "Shellstock" means raw, in-shell molluscan shellfish.

—(72) "Shucked shellfish" means molluscan shellfish that have one or both shells removed.

—(73) "Single service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use.

—(74) **Single Use Articles.**

—(a) "Single use articles" means utensils and bulk food containers designed and constructed to be used once and discarded.

—(b) "Single use articles" include items such as: wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, bread wrappers, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under Sections 5-1(1)(a), 5-2(1)(a) and 5-2(2)(a) for multiuse utensils.

—(75) "Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of 23 degrees C (-10 degrees F) to 4 degrees C (25 degrees F) in preparation for deep fat frying or to facilitate even heat penetration during the cooking of previously block frozen food such as spinach.

—(76) "Smooth" means:

—(a) A food contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number 3 stainless steel;

—(b) A nonfood contact surface of equipment having a surface equal to that of commercial grade hot rolled steel free of visible scale; and

—(c) A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

—(77) "Support animal" means a trained animal such as a Seeing Eye dog that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform.

—(78) "Table mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

—(79) "Temperature measuring device" means a thermometer, thermocouple, or other device that indicates the temperature of food, air, or water.

—(80) "Temporary or Seasonal food establishment" means a food establishment that operates for a period of no more than 60 consecutive days in conjunction with a single event or celebration.

—(81) "Transportation (transported)" means movement of food in commerce; within the food establishment; or delivery of food from that food establishment to another place while under the control of the person in charge.

—(82) "UDAF" means the Utah Department of Agriculture and Food.

—(83) "USDA" means the U.S. Department of Agriculture.

—(84) "Utensil" means a food contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food; such as: kitchenware or tableware that is multiuse, single service, or single use; gloves used in contact with food; and food temperature measuring devices.

—(85) "Vending machine" means a self service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

—(86) "Vending machine location" means the room, enclosure, space, or area where one or more vending machines are installed and

operated and includes the storage and servicing areas on the premises that are used in conjunction with the vending machines.

— (87) "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

R70-530-3. Management and Personnel.

— 3-1. Supervision.

— (1) Responsibility.

— Assignment.*

— The owner or manager shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.

— (2) Knowledge.

— (a) Demonstration of knowledge.*

— Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of this rule. The person in charge shall demonstrate this knowledge by compliance with this rule, by being a certified manager who has demonstrated knowledge of required information through an accredited test or by responding to the compliance officer's questions as they relate to the specific food operation. The areas of knowledge include:

— (i) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;

— (ii) Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;

— (iii) Describe the symptoms associated with the diseases that are transmissible through food;

— (iv) Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness;

— (v) Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;

— (vi) Stating the required food temperatures and times for safe cooking of potentially hazardous food including meat, poultry, eggs, and fish;

— (vii) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food;

— (viii) Describing the relationship between the prevention of foodborne illness and the management and control of the following:

— (A) Cross contamination;

— (B) Hand contact with ready-to-eat foods;

— (C) Handwashing; and

— (D) Maintaining the food establishment in a clean condition and in good repair;

— (ix) Explaining the relationship between food safety and providing equipment that is:

— (A) Sufficient in number and capacity; and

— (B) Properly designed, constructed, located, installed, operated, maintained, and cleaned;

— (x) Explaining correct procedures for cleaning and sanitizing utensils and food contact surfaces of equipment;

— (xi) Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;

— (xii) Identifying poisonous or toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law;

— (xiii) Identifying critical control points in the operation from purchasing through sale or service that may contribute to foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this rule;

— (xiv) Explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by the law, this rule, or an agreement between the regulatory authority and the establishment; and

— (xv) Explaining the responsibilities, rights, and authorities assigned by this rule to the:

— (A) Food employee,

— (B) Person in charge, and

— (C) Regulatory authority.

— (b) Permits for food establishment personnel.

— Every person, before engaging in the manufacturing, preparation or handling of exposed food or drink within a food establishment shall obtain a food establishment personnel permit. Said permit shall be granted only to those persons who, after making proper application, successfully pass a written examination based upon current concepts of food protection.

— (i) The permit must be renewed prior to the expiration date or at least every three years.

— (ii) The permit must be available for inspection.

— (3) Duties.

— Person in Charge.

— The person in charge shall ensure that:

— (i) Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters.

— (ii) Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food, clean equipment, utensils, and linens; and unwrapped single service and single use articles are protected from contamination;

— (iii) Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this rule;

— (iv) Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;

— (v) Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;

— (vi) Employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures;

— (vii) Employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within 4 hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;

— (viii) Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water

sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing; and

—(ix) Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets.

—(x) Employees are preventing cross-contamination of ready-to-eat food with their bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs or single-use gloves.

—(xi) Employees are properly trained in food safety.

3-2. Employee Health

—Disease or Medical Condition:

—(a) Responsibility of the Person in Charge to Require Reporting by Food Employees and Applicants.*

—The employer or person in charge shall require food employees and food employee applicants to whom a conditional offer of employment is made, to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. Appendix 1, Applicant and Food Employee Interview; Appendix 2, Food Employee Reporting Agreement; Appendix 3, Applicant and Food Employee Medical Referral; are sample forms that may be used for the medical condition section. A food employee or applicant shall report the information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission if the employee or applicant:

—(i) Is diagnosed with an illness due to:

—(A) *Salmonella typhi*;

—(B) *Shigella spp.*;

—(C) *Escherichia coli O157:H7*; or

—(D) Hepatitis A virus infection;

—(ii) Has a symptom caused by illness, infection, or other source that is:

—(A) Associated with an acute gastrointestinal illness such as:

—(I) Diarrhea;

—(II) Fever;

—(III) Vomiting;

—(IV) Jaundice; or

—(V) Sore throat with fever; or

—(B) A lesion containing pus, such as a boil or infected wound, that is open or draining and is:

—(I) On the hands, wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;

—(II) On exposed portions of the arms, unless the lesion is protected by an impermeable cover; or

—(III) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;

—(iii) Had a past illness from an infectious agent specified in Subsection (i) of this section; or

—(iv) Meets one or more of the following high-risk conditions:

—(A) Is suspected of causing, or being exposed to, a confirmed disease outbreak caused by *S. typhi*, *Shigella spp.*, *E. coli O157:H7*, or hepatitis A virus including an outbreak at an event such as a family meal, church dinner, or festival because the food employee or applicant:

—(I) Prepared food implicated in the outbreak;

—(II) Consumed food implicated in the outbreak; or

—(III) Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent; or

—(B) Lives in the same household as a person who is diagnosed with a disease caused by *S. typhi*, *Shigella spp.*, *E. coli O157:H7*, or hepatitis A virus infection;

—(C) Lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by *S. typhi*, *Shigella spp.*, *E. coli O157:H7*, or hepatitis A virus infection;

—(D) Traveled out of the United States or to a United States' territory within the last 50 calendar days to an area that is identified as having epidemic or endemic disease caused by *S. typhi*, *Shigella spp.*, *E. coli O157:H7*, or hepatitis A virus based on information published by the Centers for Disease Control and Prevention, such as the document titled Health Information for International Travel.

—(b) Exclusions and Restrictions.*

—The person in charge shall:

—(i) Exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent with a likelihood of it being transmitted through food; or

—(ii) Except as specified under Subsection (iii) or (iv) of this section, restrict a food employee from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles, in a food establishment if the food employee is:

—(A) Suffering from a symptom specified under Subsection 3-2(a)(ii); or

—(B) Not experiencing a symptom of acute gastroenteritis specified under Subsection 3-2(a)(ii)(A) but has a stool that yields a specimen culture that is positive for *Salmonella typhi*, *Shigella spp.*, or *Escherichia coli O157:H7*;

—(iii) If the population served is a highly-susceptible population, exclude a food employee who:

—(A) Is experiencing a symptom of acute gastrointestinal illness specified under Subsection 3-2(a)(ii)(A) and meets a high risk condition specified under Subsections 3-2(a)(iv)(A)-(D);

—(B) Is not experiencing a symptom of acute gastroenteritis specified under Subsection 3-2(a)(ii)(A) but has a stool that yields a specimen culture that is positive for *S. typhi*, *Shigella spp.*, or *E. coli O157:H7*;

—(C) Had a past illness from *S. typhi* within the last 3 months; or

—(D) Had a past illness from *Shigella spp.* or *E. coli O157:H7* within the last month; and

—(iv) For a food employee who is jaundiced:

—(A) If the onset of jaundice occurred within the last 7 calendar days, exclude the food employee from the food establishment; or

—(B) If the onset of jaundice occurred more than 7 calendar days before:

—(I) Exclude the food employee from a food establishment that serves a highly-susceptible population; or

—(II) Restrict the food employee from activities specified under Subsection 3-2(1)(b)(ii), if the food establishment does not serve a highly-susceptible population.

—(v) Restrict or exclude an employee from direct food contact based on the recommendation of the UDAF or the local health department.

—(c) Removal of Exclusions and Restrictions:

—(i) The person in charge may remove an exclusion specified under Subsection 3-2(b)(i) if:

—(A) The person in charge obtains approval from the District Health Department or the regulatory authority; and

—(B) The person excluded as specified under Subsection 3-2(b)(i) provides to the person in charge written medical documentation, from a physician licensed to practice medicine, that specifies that the excluded person may work in an unrestricted capacity in a food establishment, including an establishment that serves a highly-susceptible population;

because the person is free of the infectious agent of concern as specified in Section 10-5(d).

— (ii) The person in charge may remove a restriction specified under:

— (A) Subsection 3-2(b)(ii)(A) if the restricted person:

— (I) Is free of the symptoms specified under Subsection 3-2(a)(ii) and no foodborne illness occurs that may have been caused by the restricted person;

— (II) Is suspected of causing foodborne illness but is free of the symptoms specified under 3-2(a)(ii), and provides written medical documentation from a physician licensed to practice medicine stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in Section 10-5(d), or

— (III) Provides written medical documentation, from a physician licensed to practice medicine, stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis; or

— (B) Subsection 3-2(b)(i)(B) if the restricted person provides written medical documentation from a physician, licensed to practice medicine, according to the criteria specified in Section 10-5(d) that indicates the stools are free of *Salmonella typhi*, *Shigella* spp., or *E. coli* O157:H7, whichever is the infectious agent of concern.

— (iii) The person in charge may remove an exclusion specified under Subsection 3-2(b)(iii) if the excluded person provides written medical documentation from a physician licensed to practice medicine:

— (A) That specifies that the person is free of:

— (I) The infectious agent of concern as specified in Section 10-5(d), or

— (II) Jaundice as specified under Subsection 3-2(e)(iv) if hepatitis A virus is the infectious agent of concern; or

— (B) If the person is excluded under Subsection 3-2(1)(b)(iii)(A), stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis;

— (iv) The person in charge may remove an exclusion specified under Subsection 3-2(b)(iv)(A) and Subsection 3-2(b)(iv)(B)(II) and a restriction specified under Subsection 3-2(b)(iv)(B)(II) if:

— (A) No foodborne illness occurs that may have been caused by the excluded or restricted person and the person provides written medical documentation from a physician licensed to practice medicine that specifies that the person is free of hepatitis A virus as specified in Subsection 10-5(d)(iv)(A); or

— (B) The excluded or restricted person is suspected of causing foodborne illness and complies with the requirements in Subsections 10-5(d)(iv)(A) and (B);

— (d) Responsibility of a Food Employee or an Applicant to Report to the Person in Charge.*

— A food employee or a person who applies for a job as a food employee shall:

— (i) In a manner specified in 3-2(1) report to the person in charge the information specified in Subsections 3-2(i)-(iv); and

— (ii) Comply with exclusions and restrictions that are specified in this rule.

— (e) Reporting by the Person In Charge.*

— The person in charge shall notify the regulatory authority of a food employee or a person who applies for a job as a food employee who is diagnosed with, or is suspected of having an illness due to, *Salmonella typhi*, *Shigella* species, *Escherichia coli* O157:H7, or hepatitis A virus.

— 3-3. Personal Cleanliness:

— (1) Hands and Arms:

— (a) Clean Condition.*

— Food employees shall keep their hands and exposed portions of their arms clean:

— (b) Handwash Procedure.*

— Food employees shall clean their hands and exposed portions of their arms with a cleaning compound in a lavatory that is equipped to provide water at a temperature of at least 110 degrees F (43 degrees C) through a mixing valve or combination faucet, by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers.

— (c) When to Wash.*

— Food employees shall clean their hands and exposed portions of their arms immediately before engaging in food preparation including working with exposed food, clean equipment, and utensils, and unwrapped single-service and single-use articles, and:

— (i) After touching bare human body parts other than clean hands and clean, exposed portions of arms;

— (ii) After using the toilet room;

— (iii) After caring for or handling support animals;

— (iv) After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;

— (v) After handling soiled equipment or utensils;

— (vi) During food preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks;

— (viii) When switching between working with raw foods and working with ready-to-eat foods; or

— (ix) After engaging in other activities that contaminate the hands.

— (d) Where to Wash:

— Food employees shall clean their hands in a handwashing lavatory and may not clean their hands in a sink used for food preparation, or a curbed cleaning facility used for the disposal of mop water and similar liquid waste:

— (e) Hand Sanitizer:

— (i) A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall:

— (A) Have active antimicrobial ingredients that are:

— (I) Listed as safe and effective for application to human skin as an Antiseptic Handwash in a monograph for OTC (over-the-counter) Health Care Antiseptic Drug Products, or

— (II) Previously authorized, and listed for such use in the USDA List of Proprietary Substances and Nonfood Compounds, Miscellaneous Publication No. 1419;

— (B) Have components that are:

— (I) Regulated for the intended use as food additives as specified in 21 CFR 178—Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers, or

— (II) Generally recognized as safe (GRAS) for the intended use in contact with food within the meaning of the Federal Food, Drug, and Cosmetic Act, Section 201(s), or

— (III) Exempted from the requirement of being listed in the federal food additive regulations as specified in 21 CFR 170.39 Threshold of regulation for substances used in food-contact articles; and

— (H) Be applied only to hands that are cleaned as specified under Section 3-3(1)(b).

— (ii) If a hand sanitizer or a chemical hand sanitizing solution used as a hand dip does not meet the criteria specified under Subsection (i)(B) of this section, use shall be:

— (A) Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or

— (B) Limited to situations that involve no direct contact with food by the bare hands.

— (iii) A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 ppm chlorine.

— (2) Fingernails.

— Maintenance.

— Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

— (3) Jewelry.

— Prohibition.

— While preparing food, food employees may not wear jewelry on their arms and hands. This section does not apply to a plain ring such as a wedding band.

— (4) Outer Clothing.

— Clean Condition.

— Food employees shall wear clean outer clothing, such as a laundered apron, to prevent contamination of food, equipment, utensils, linens, and single service and single use articles.

— 3 4. Hygienic Practices.

— Food Contamination Prevention.

— (a) Eating, Drinking, or Using Tobacco.*

— (i) Except as specified in (ii) of this section, an employee shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single service and single use articles; or other items needing protection can not result.

— (ii) A food employee may drink from a closed beverage container if the container is handled to prevent contamination of:

— (A) The employee's hands;

— (B) The container; and

— (C) Exposed food; clean equipment, utensils, and linens; and unwrapped single service and single use articles.

— (b) Discharges from the Eyes, Nose, and Mouth.*

— Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single service or single use articles.

— (6) Hair Restraints.

— Effectiveness.

— (i) Food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single service and single use articles, except as provided under (ii) of this section.

— (ii) This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff, if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single service and single use articles.

— (7) Animals.

— Handling Prohibition.*

— (i) Food employees may not care for or handle animals that may be present such as patrol dogs, support animals, or pets that are allowed under Subsections 7-5(1)(ii)(B)-(D), except as specified in (ii) of this section.

— (ii) Food employees with support animals may handle or care for their support animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in a display tank if they wash their hands before working with exposed food; clean equipment, utensils, and linens; or unwrapped single service and single use articles.

R70 530 4. Food.

— 4 1. Characteristics.

— Safe, Unadulterated, and Honestly Presented.*

— Food shall be safe, unadulterated, and honestly presented.

— 4 2. Sources, Specifications, and Original Containers and Records.

— (1) Sources.

— (a) Compliance with Food Law.*

— (i) Food shall be obtained from sources that comply with law. Food shall be in sound condition, free from filth, decay and other contamination, and safe for human consumption.

— (ii) Food prepared in a private home may not be used or offered for human consumption in a food establishment.

— (iii) Packaged food shall be labeled as specified in law, including 21 CFR 101 Food Labeling, 9 CFR 317 Labeling, Marking Devices, and Containers, and 9 CFR 381 Subpart N Labeling and Containers.

— (iv) Fish, other than molluscan shellfish, that are intended for consumption in their raw form shall be obtained from a supplier that freezes the fish as required by this rule; or shall be frozen on the premises as required by this rule; and records shall be retained as required:

— (b) Food in a Hermetically Sealed Container.*

— Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

— (c) Fluid Milk and Milk Products.*

— Fluid milk and milk products shall be obtained from sources that comply with Title 4, Chapter 3.

— (d) Fish.*

— Fish may not be received for sale or service unless they are commercially and legally caught or harvested.

— (e) Molluscan Shellfish.*

— (i) Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Manual of Operations Part II Sanitation of the Harvesting, Processing and Distribution of Shellfish.

— (ii) Molluscan shellfish received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List.

— (f) Wild Mushrooms.*

— Wild mushroom species shall be obtained from an approved cultivated source under inspection by an appropriate regulatory authority.

— (g) Game Animals.*

— If game animals or other animals are received for sale or service they shall be:

— Commercially raised for food and:

— (A) Raised, slaughtered, and processed under a voluntary meat inspection program by UDAF, Division of Animal Industry, or

— (B) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352 Voluntary Exotic Animal Program, or

— (C) Raised, slaughtered, and processed under a routine inspection program conducted by UDAF, Division of Regulatory Services. Game meat under this program shall be:

— (I) Slaughtered in facility approved by UDAF and with considerations of a antemortem and postmortem examination done by a veterinarian or a trained veterinarian's designee, or as approved by the regulatory authority.

— (II) Processed under a HACCP plan according to laws governing meat and poultry products.

— (2) Specifications for Transporting and Receiving.

— (a) Temperature.*

— (i) Refrigerated, potentially hazardous food shall be at a temperature of 5 degrees C (41 degrees F) or below when received, except as specified under Subsection (ii) of this section.

— (ii) If a temperature other than 5 degrees C (41 degrees F) for a potentially hazardous food is specified in law governing its distribution such as laws governing milk, molluscan shellfish, and shell eggs, the food may be received at the specified temperature.

— (iii) Potentially hazardous food that is cooked to a temperature and for a time specified under Sections 4-4(1)(a) (c) and received hot shall be at a temperature of 60 degrees C (140 degrees F) or above.

— (iv) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.

— (v) Upon receipt, potentially hazardous food shall be free of evidence of previous temperature abuse.

— (b) Food Transportation:

— Food, other than hanging primal cuts, quarters, or sides of meat, and raw fruits and raw vegetables, shall be protected from contamination by use of packaging or covered containers while being transported. All food being transported shall meet the applicable requirements of this rule relating to food protection and food storage. Foods packaged in immediate closed containers do not need to be overwrapped or covered if the immediate closed containers have not been opened, torn, or broken.

— (c) Food Protection:

— (i) During transportation and storage, food, food related items, and water, shall be protected from potential cross-contamination from toxic materials, insects, rodents, or other substances that may render the food adulterated.

— (ii) The use of vehicles or vessels to transport food or water to backhaul non-food compatible materials is prohibited unless:

— (A) Reconditioning has occurred that would render the vehicle or vessel safe for the transportation of food.

— (B) The vehicle or vessel is properly cleaned and sanitized between the different items.

— (d) Additives.*

— Food may not contain unapproved food additives or additives that exceed amounts allowed in 21 CFR 170-180, relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts allowed in 21 CFR, 181-186, substances that exceed amounts specified in 9 CFR 318.7 Approval of substances for use in the preparation of products, or pesticide residues that exceed provisions specified in 40 CFR 185 Tolerances for Pesticides in Food.

— (e) Shell Eggs.*

— Shell eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in 7 CFR Part 56 Regulations Governing the Grading of Shell Eggs and

U.S. Standards, Grades, and Weight classes for Shell Eggs, and 7 CFR Part 59 Regulations Governing the Inspection of Eggs and Egg Products:

— (f) Egg and Milk Products, Pasteurized.*

— (i) Liquid, frozen, and dry eggs and egg products shall be obtained pasteurized.

— (ii) Fluid and dry milk and milk products complying with Grade A standards as established by R70-310 and Title 4, Chapter 3 shall be obtained pasteurized.

— (iii) Frozen milk products such as ice cream, shall be obtained pasteurized in accordance with 21 CFR 135 Frozen Desserts.

— (iv) Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are provided for in the CFR, such as in 21 CFR 133 Cheeses and Related Cheese Products, for curing certain cheese varieties.

— (g) Package Integrity.*

— Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

— (h) Ice.*

— Ice for use as a food or a cooling medium shall be made from potable drinking water.

— (i) Shucked Shellfish, Packaging and Identification.

— (i) Raw and frozen shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the:

— (A) Name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish; and

— (B) The "sell by" date for packages with a capacity of less than 1.87 L (one-half gallon) or the date shucked for packages with a capacity of 1.87 L (one-half gallon) or more.

— (ii) A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under Subsection (i) of this section shall be subject to a hold order, and destruction.

— (j) Shellstock Identification.*

— Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program Manual of Operations, Part II Sanitation of the Harvesting, Processing and Distribution of Shellfish, and that list:

— (i) Except as specified under Subsection (iii) of this section, on the harvester's tag or label, the following information in the following order:

— (A) The harvester's identification number that is assigned by the shellfish control authority;

— (B) The date of harvesting;

— (C) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested;

— (D) The type and quantity of shellfish, and

— (E) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days;" and

— (ii) Except as specified under Subsection (iv) of this section, on each dealer's tag or label, the following information in the following order:

— (A) The dealer's name and address, and the certification number assigned by the shellfish control authority;

~~—(B) The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested;~~

~~—(C) The information specified under Subsections (i)(B)-(D) of this section, and~~

~~—(D) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for 90 days."~~

~~—(iii) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under Subsection (i) of this section shall be subject to a hold order and destruction.~~

~~—(iv) If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.~~

~~—(v) If the harvester's tag or label is designed to accommodate each dealer's identification as specified under Subsections (ii)(A) and (B) of this section, individual dealer tags or labels need not be provided.~~

~~—(k) Shellstock, Condition.~~

~~When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.~~

~~—(3) Molluscan Shellfish, Original Containers and Records.~~

~~—(a) Molluscan Shellfish, Original Container.~~

~~—(i) Molluscan shellfish may not be removed from the container in which they were received other than immediately before sale or preparation for service, except as specified under Subsections (ii) and (iii) of this section.~~

~~—(ii) Shellstock may be removed from the container in which they were received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:~~

~~—(A) The source of the shellstock on display is identified as specified under Section 4-2(2)(j) and recorded as specified under Section 4-2(3)(b); and~~

~~—(B) The shellstock are protected from contamination.~~

~~—(iii) Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:~~

~~—(A) The labeling information for the shellfish on display as specified under Section 4-2(2)(i) is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and~~

~~—(B) The shellfish are protected from contamination.~~

~~—(b) Shellstock, Maintaining Identification.*~~

~~Except as specified under Subsection (ii)(B) of this section, shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date the container is emptied by:~~

~~—(i) Using an approved record keeping system approved by the regulatory authority that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and~~

~~—(ii) If shellstock are removed from their tagged or labeled container:~~

~~—(A) Using only 1 tagged or labeled container at a time, or~~

~~—(B) Using more than 1 tagged or labeled container at a time and obtaining a variance from the regulatory authority as specified under Section 10-1(3)(a) based on a HACCP plan that:~~

~~—(I) Is submitted by the owner or person in charge and approved by the regulatory authority as specified under Section 10-1(3)(b);~~

~~—(II) Preserves source identification by using a record keeping system as specified under Subsection (i) of this section, and~~

~~—(III) Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container before being ordered by the consumer.~~

~~—4-3. Protection from Contamination after Receiving.~~

~~—(1) Preventing Contamination by Employees.~~

~~—(a) Preventing Contamination from Hands.*~~

~~—(i) Food employees shall wash their hands as specified under Section 3-3(1)(b) and (c).~~

~~—(ii) Except when washing fruits and vegetables as specified under 4-2(2)(e) or when otherwise approved, food employees shall avoid contact with exposed ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissues, spatulas, tongs, single use gloves or dispensing equipment.~~

~~—(iii) Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.~~

~~—(b) Preventing Contamination when Tasting.*~~

~~—A food employee may not use a utensil more than once to taste food that is to be sold or served.~~

~~—(2) Preventing Food and Ingredient Contamination.~~

~~—(a) Packaged and Unpackaged Food Separation, Packaging, and Segregation.*~~

~~—(i) Food shall be protected from cross-contamination by:~~

~~—(A) Separating raw animal foods during storage, preparation, holding, and display from:~~

~~—(I) Raw ready-to-eat food including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as vegetables, and~~

~~—(II) Cooked ready-to-eat food;~~

~~—(B) Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:~~

~~—(I) Using separate equipment for each type, or~~

~~—(II) Arranging each type of food in equipment so that cross-contamination of one type with another is prevented, and~~

~~—(III) Preparing each type of food at different times or in separate areas;~~

~~—(C) Cleaning equipment and utensils as specified under Section 5-6(2)(i) and sanitizing as specified under Section 5-7(2);~~

~~—(D) Except as specified under Subsection (ii) of this section, storing the food in packages, containers, or wrappings;~~

~~—(E) Cleaning hermetically sealed containers of food of visible soil before opening;~~

~~—(F) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;~~

~~—(G) Storing damaged, spoiled, or recalled food being held in the food establishment in designated areas that are separated from food, equipment, utensils, linens, and single service and single use articles; and~~

~~—(H) Separating fruits and vegetables, before they are washed from ready-to-eat food.~~

~~—(ii) Subsection (i)(D) of this section does not apply to:~~

~~—(A) Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;~~

~~—(B) Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;~~

~~—(C) Whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks; or~~

~~—(D) Food being cooled as specified under Subsection 4-5(c)(ii)(B).~~

~~—(E) Shellstock.~~

~~—(b) Food Storage Containers, Identified with Common Name of Food.~~

~~—Working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food except that containers holding food that can be readily and unmistakably recognized, such as dry pasta, need not be identified.~~

~~—(c) Pasteurized Eggs, Substitute for Shell Eggs for Certain Recipes and Populations.*~~

~~—Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or bernaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages that are not:~~

~~—(i) Cooked as specified under Subsections 4-4(1)(i)(A) or (B) or~~

~~—(ii) Included under Subsection 4-4(1)(iii)(A).~~

~~—(d) Protection from Unapproved Additives.*~~

~~—(i) Food shall be protected from contamination that may result from the addition of:~~

~~—(A) Unsafe or unapproved food or color additives; and~~

~~—(B) Unsafe or unapproved levels of approved food and color additives.~~

~~—(ii) A food employee may not:~~

~~—(A) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B₁; or~~

~~—(B) Serve or sell food specified under Subsection (ii) (A) of this section that is treated with sulfiting agents before receipt by the food establishment, except that grapes need not meet this subsection.~~

~~—(e) Washing Fruits and Vegetables.~~

~~—(i) Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form except that whole, raw fruits and vegetables that are intended for washing by the consumer before consumption need not be washed before they are sold.~~

~~—(ii) Fruits and vegetables may be washed by using chemicals as specified under Section 8-2(4)(b) of this rule.~~

~~—(3) Preventing Contamination from Ice used as a Coolant.~~

~~—(a) Ice Used as Exterior Coolant, Prohibited as Ingredient.~~

~~—After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food.~~

~~—(b) Storage or Display of Food in Contact with Water or Ice.~~

~~—(i) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.~~

~~—(ii) Unpackaged food may only be stored in direct contact with drained ice, except as specified under Subsections (iii) and (iv) of this section.~~

~~—(iii) Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in potable ice or water.~~

~~—(iv) Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.~~

~~—(4) Preventing Contamination from Equipment, Utensils, and Wiping Cloths.~~

~~—(a) Food Contact with Equipment and Utensils.*~~

~~—Food may not contact:~~

~~—(i) Probe-type price or identification tags; and~~

~~—(ii) Surfaces of utensils and equipment that are not cleaned as specified under Section 5-6 and sanitized under Section 5-7 of this rule.~~

~~—(b) In Use Utensils, Between Use Storage.~~

~~—During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:~~

~~—(i) In the food with their handles above the top of the food and the container; except as specified under Subsection (ii) of this section.~~

~~—(ii) In food that is not potentially hazardous with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;~~

~~—(iii) On a clean portion of the food preparation table or cooking equipment and shall be cleaned and sanitized at a frequency specified under Sections 5-6(2) and 5-7(2);~~

~~—(iv) In running water of sufficient velocity or flow to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes; or~~

~~—(v) In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous.~~

~~—(c) Linens and Napkins, Use Limitation.~~

~~—Linens and napkins may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.~~

~~—(d) Wiping Cloths, Used for One Purpose.~~

~~—(i) Cloths that are in use for wiping food spills shall be used for no other purpose.~~

~~—(ii) Cloths used for wiping food spills shall be:~~

~~—(A) Dry and used for wiping food spills from tableware and carry-out containers; or~~

~~—(B) Moist and cleaned, stored in a chemical sanitizer, and used for wiping spills from food contact and nonfood contact surfaces of equipment.~~

~~—(iii) Dry or moist cloths that are used with raw animal foods shall be kept separate from cloths used for other purposes, and moist cloths used with raw animal foods shall be kept in a separate sanitizing solution.~~

~~—(e) Gloves, Use Limitation.~~

~~—(i) If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.~~

~~—(ii) Except as specified under Subsection (iii) of this section, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified under Section 4-4 such as frozen food or a primal cut of meat.~~

~~—(iii) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove.~~

~~—(iv) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under Section 4-4 such as frozen food or a primal cut of meat.~~

~~—(f) Using Clean Tableware for Second Portions and Refills.~~

~~—(i) Food employees may not use tableware, including single-service articles, soiled by the consumer to provide second portions or refills.~~

~~—(ii) Self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment, except as specified under Subsection (iii) of this section.~~

~~—(iii) Cups and glasses may be reused by self-service consumers if refilling is a contamination-free process as specified under Subsections 5-2(4)(c)(i), (ii), and (iv).~~

~~—(g) Refilling Returnables.~~

~~—(i) A take-home food container returned to a food establishment may not be refilled at a food establishment with a potentially hazardous food.~~

~~—(ii) Except as specified in Subsection (iii), a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified under Subsection 5-6(3)(g)(ii).~~

~~—(iii) Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified under Subsections 5-2(4)(c)(i), (ii), and (iv).~~

~~—(5) Preventing Contamination from the Premises.~~

~~—(a) Food Storage.~~

~~—(i) Except as specified under Subsections (ii) and (iii) of this section, food shall be protected from contamination by storing the food:~~

~~—(A) In a clean, dry location;~~

~~—(B) Where it is not exposed to splash, dust, or other contamination; and~~

~~—(C) At least 15 cm (6 inches) above the floor.~~

~~—(ii) Food in packages and working containers may be stored less than 15 cm (6 inches) above the floor on ease lot handling equipment as specified under Section 5-2(4)(u).~~

~~—(iii) Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture provided that the containers are cleaned before placing on a food contact surface.~~

~~—(b) Food Storage, Prohibited Areas.~~

~~Food may not be stored:~~

~~—(i) In locker rooms;~~

~~—(ii) In toilet rooms;~~

~~—(iii) In dressing rooms;~~

~~—(iv) In garbage rooms;~~

~~—(v) In mechanical rooms;~~

~~—(vi) Under sewer lines that are not shielded to intercept potential drips;~~

~~—(vii) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;~~

~~—(viii) Under open stairwells; or~~

~~—(ix) Under other sources of contamination.~~

~~—(e) Vended Potentially Hazardous Food, Original Container.~~

~~Potentially hazardous food dispensed through a vending machine shall be in the package in which it was placed at the food establishment or food processing plant at which it was prepared.~~

~~—(d) Food Processing Areas:~~

~~—(i) Food processing areas where exposed food is handled, processed, and packaged, shall be:~~

~~—(A) Limited to the processing of food.~~

~~—(B) Completely enclosed or have a solid barrier that prevents the access of unauthorized personnel.~~

~~—(C) Operated in a way where food items that are not compatible are processed in a separate area or in such a manner that cross-contamination does not occur between the foods. Examples of this type of situation would be, a retail meat market that processes game animals during hunting season and inspected meat products, or a processing area that handles raw meat and cheeses.~~

~~—(D) Operated so unpackaged food is protected from environmental sources of contamination.~~

~~—(ii) The processing area shall be protected against dirt and other debris during remodeling or construction by:~~

~~—(A) Remodeling at a time when no food processing is occurring, after which a thorough cleaning and sanitizing of food contact surfaces is done; or~~

~~—(B) Erecting a temporary barrier that protects the food processing area; and~~

~~—(C) During food processing, covering any existing openings to the outside.~~

~~—(iii) The processing of hazardous chemicals or other non-food-compatible items is prohibited unless permission is granted by the UDAF.~~

~~—(iv) Trucks or vehicles used to transport food shall not be repaired or parked in food processing areas.~~

~~—(v) Molluscan shellfish shall be repackaged in approved facilities that specialize in the processing of fish or fish-related products.~~

~~—(6) Preventing Contamination from Consumers~~

~~—(a) Food Display.~~

~~Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means.~~

~~—(b) Bulk Foods.~~

~~—(i) Bulk foods and product modules shall be protected from contamination during display, customer self-service, refilling and storage.~~

~~—(ii) Containers of bulk pet foods and bulk non-food items shall be separated by a barrier or open space from food modules.~~

~~—(iii) Bulk food returned to the store by the customer shall not be offered for resale.~~

~~—(iv) Only containers provided by the store in the display area shall be filled with bulk foods, except as provided under Section 5-6(3)(g).~~

~~—(v) Customers shall be instructed to use dispensing utensils to dispense bulk products and that handling the products without using the dispensing utensils is prohibited.~~

~~—(c) Dispensing utensils.~~

~~—(i) To avoid unnecessary manual contact with the food, suitable dispensing utensils and single-service articles shall be used by employees. Consumers who serve themselves bulk food shall be provided suitable dispensing utensils.~~

~~—(ii) Manual contact of bulk foods by the customer during dispensing shall be avoided. Methods considered suitable are:~~

~~—(A) Mechanical dispensing devices including gravity dispensers, pumps, extruders and augers;~~

~~—(B) Manual dispensing utensils including tongs, scoops, ladles and spatulas; and~~

— (C) Wrapping or sacking.

— (iii) If the dispensing devices and utensils listed under Subsection (ii)(A) and (B) of this section do not prevent manual customer contact with certain bulk foods, then these foods must be wrapped or sacked prior to display.

— (iv) Manual dispensing utensils listed under Subsection (ii)(B) shall be protected against becoming contaminated and serving as vehicles for introducing contamination into bulk food. Means considered suitable include, but are not limited to:

— (A) Using a tether which is easily removable from the product module, constructed of easily cleanable material, is of such length that the utensil cannot contact the floor, and is designed to prevent interference with the requirement for close fitting covers, or

— (B) Storing the utensil in a sleeve or protective housing attached or adjacent to the display unit when not in use, or utilizing a utensil designed so that the handle cannot contact the product if left in the product module.

— (d) Condiments, Protection:

— (i) Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.

— (ii) Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.

— (e) Consumer Self-Service Operations.*

— (i) Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self service. This Subsection does not apply to consumer self service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish, or to ready-to-cook individual portions for immediate cooking and consumption on the equipment such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue.

— (ii) Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.

— (iii) Consumer self-service operations, such as buffets and salad bars, shall be monitored by food employees trained in safe operating procedures.

— (f) Food sample demonstrations and food promotions:

— (i) When food sample demonstrations and food promotions are conducted in the food establishment, the person in charge shall ensure that such activities comply with the applicable sanitation provisions of this rule.

— (ii) Food demonstrations involving unpackaged food shall not be conducted in a food establishment unless a processing area is provided. The area shall have:

— (A) A three (3) compartment sink; supplied with:

— (I) Hot and cold running water; and

— (II) Soap and sanitizer.

— (B) A Handwashing lavatory; supplied with:

— (I) Hot and cold running water;

— (II) Soap and hand towels;

— (C) Proper waste disposal; and

— (D) A conveniently located restroom.

— (iii) If the food demonstration is being conducted by a business other than the owner of the food establishment, written permission issued by the owner, manager, or person in charge, shall be on file at the office of the business conducting the food demonstration that indicates they may use the food establishment's processing area for equipment cleaning and handwashing.

— (iv) The food demonstration employee shall have a:

— (A) Food handler permit as specified under 3-2(a);

— (B) A basic knowledge of food sanitation that pertains to the food they are dispensing to the consumer for samples;

— (v) Employees shall not use household or personal utensils or equipment, such as pans or cutting boards, for the demonstration, preparation or sampling of food.

— (vi) Advanced preparation of any food items shall be prepared in an approved facility and not in an individual's home, as specified under 7-2(k).

— (vii) In store sampling areas shall be located so the food samples can be under constant observation by a food employee trained in safe operating procedures to ensure product safety.

— (g) Returned Food, Reserve or Sale.*

— (i) Except as specified under Subsection (ii) of this section, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.

— (ii) Except as specified under Section 4-8 food that is not potentially hazardous, such as crackers and condiments, in an unopened original package, and maintained in sound condition may be re-served or resold.

— 4.4. Destruction of Organism of Public Health Concern:

— (1) Cooking:

— (a) Raw Animal Foods.*

— (i) Except as specified under Subsections (ii) and (iii) of this section, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

— (A) 63 degrees C (145 degrees F) or above for 15 seconds for:

— (I) Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service, and

— (II) Except as specified under Subsections (i)(B) and (C) and Subsection (ii) of this section, fish and meat including game animals commercially raised for food as specified under Section 4-2(1)(g);

— (B) 68 degrees C (155 degrees F) for 15 seconds or the temperature specified in the following table that corresponds to the holding time for pork, ratites, and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified under Section 4-2(1)(g); and raw eggs that are not prepared as specified under Subsection (i)(A)(I) of this section:

TABLE 1

Minimum		
Temperature		Time
deg F (deg C)		
145 (63)		3 minutes
150 (66)		1 minute

— (C) 74 degrees C (165 degrees F) or above for 15 seconds for poultry, wild game animals as specified under Section 4-2(1)(g); stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites.

—(ii) Whole beef roasts and corned beef roasts shall be cooked:
 —(A) In an oven that is preheated to the temperature specified for the roast's weight in the following table and that is held at that temperature:

TABLE 2

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kg (10 lbs)	4.5 kg (10 lbs) or More
	deg F (deg C)	deg F (deg C)
Still Dry	350 (177) or more	250 (121) or more
Convection	325 (163) or more	250 (121) or more
High Humidity(1)	250 (121) or less	50 (121) or less

(1) Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture impermeable bag that provides 100% humidity, and*

—(B) As specified in the following table, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature:

TABLE 3

Temperature	Time(1) in	Temperature	Time(1) in
deg F (deg C)	Minutes	deg F (deg C)	Minutes
130 (54)	121	136 (58)	32
132 (56)	77	138 (59)	19
134 (57)	47	140 (60)	12

Temperature	Time(1) in
deg F (deg C)	Minutes
142 (61)	8
144 (62)	5
145 (63)	3

(1) Holding time may include postoven heat rise.

—(iii) Subsections (i) and (ii) of this section do not apply if:
 —(A) Except for food service establishment serving a highly susceptible population, the food is a raw animal food such as raw egg; raw fish; raw marinated fish; raw molluscan shellfish; steak tartare; or a partially cooked food such as lightly cooked fish, rare meat, and soft cooked eggs that is served or offered for sale in a ready to eat form, and the consumer is informed as specified under Section 3-6(3) that to ensure its safety, the food should be cooked as specified under Subsection (i) of this section; or

—(B) The regulatory authority grants a variance from Subsection (i) or (ii) of this section as specified in Section 10-1(3)(a) based on a HACCP plan that:

—(I) Is submitted by the owner or person in charge and approved as specified under Section 10-1(3)(b);

—(II) Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food, and

—(III) Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

—(b) Microwave Cooking.*

Raw animal foods cooked in a microwave oven shall be:

—(i) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

—(ii) Covered to retain surface moisture;

—(iii) Heated to a temperature of at least 74 degrees C (165 degrees F) in all parts of the food; and

—(iv) Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

—(c) Plant Food Cooking for Hot Holding.

—Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 60 degrees C (140 degrees F).

—(2) Freezing.

—(a) Parasite Destruction.*

—(i) Except as specified under Subsection (ii) of this section, before service or sale in ready to eat form, raw, raw marinated, partially cooked, or marinated partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of:

—(A) 20 degrees C (-4 degrees F) or below for 168 hours (7 days) in a freezer; or

—(B) 35 degrees C (-31 degrees F) or below for 15 hours in a blast freezer.

—(ii) If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), the fish may be served or sold in a raw, raw marinated, or partially cooked ready to eat form without freezing as specified under Subsection (i) of this section.

—(b) Records, Creation and Retention.

—(i) Except as specified under Subsection 4-4(2)(a)(i) and Subsection (ii) of this section, if raw, marinated, or partially cooked fish are served or sold in ready to eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food establishment for 90 calendar days beyond the time of service or sale of the fish.

—(ii) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under Section 4-4(2)(a) may substitute for the records specified under Subsection (i) of this section.

—(3) Reheating.

—(a) Reheating for Hot Holding.*

—(i) Except as specified under Subsections (ii), (iii), and (v) of this section, potentially hazardous food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74 degrees C (165 degrees F) for 15 seconds.

—(ii) Except as specified under Subsection (iii) of this section, potentially hazardous food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74 degrees C (165 degrees F) and the food is rotated or stirred, covered, and allowed to stand covered 2 minutes after reheating.

—(iii) Ready to eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 60 degrees C (140 degrees F) for hot holding.

—(iv) Reheating for hot holding shall be done rapidly and the time the food is between the temperature specified under 4-5(1)(f)(ii) or (iii) and 74 degrees C (165 degrees F) may not exceed 2 hours.

—(v) Remaining unsliced portions of roasts of beef that are cooked as specified in Subsection 4-4(1)(a)(iii) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified in Subsection 4-4(1)(a)(ii).

—(b) Reheating for Immediate Service.

—Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

— 4-5. Limitation of Growth of Organism of Public Health Concern

— (1) Temperature and Time Control.

— (a) Frozen Food.

— Stored frozen foods shall be maintained frozen.

— (b) Potentially Hazardous Food, Slaeking.

— Frozen potentially hazardous food that is slaeked to moderate the temperature shall be held:

— (i) Under refrigeration that maintains the food temperature at 5 degrees C (41 degrees F) or less, or at 7 degrees C (45 degrees F) or less; or less as specified under 4-5(1)(f)(iii) or;

— (ii) At any temperature if the food remains frozen.

— (c) Thawing.

— Except as specified under Subsection (iv) of this section, potentially hazardous food shall be thawed:

— (i) Under refrigeration that maintains the food temperature at 5 degrees C (41 degrees F) or less, or at 7 degrees C (45 degrees F) or less; or less as specified under 4-5(1)(f)(iii) or;

— (ii) Completely submerged under running water:

— (A) At a water temperature of 21 degrees C (70 degrees F) or below;

— (B) With sufficient water velocity to agitate and float off loose particles in an overflow; and

— (C) For a period of time that does not allow thawed portions of ready to eat food to rise above 5 degrees C (41 degrees F), or 7 degrees C (45 degrees F) as specified under 4-5(1)(f)(iii) or;

— (D) For a period of time that does not allow thawed portions of ready to eat food to rise above 5 degrees C (41 degrees F), or 7 degrees C (45 degrees F); or as specified under 4-5(1)(f)(iii) for more than 4 hours including:

— (I) The time the food is exposed to the running water and the time needed for preparation for cooking; or

— (II) The time it takes under refrigeration to lower the food temperature to at 5 degrees C (41 degrees F), or at 7 degrees C (45 degrees F) as specified under 4-5(1)(f)(iii);

— (iii) As part of a cooking process if the food that is frozen is:

— (A) Cooked as specified under Subsections 4-4(1)(a)(i) or (ii) or Section 4-4(1)(b); or

— (B) Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

— (iv) Using any procedure that thaws a portion of frozen ready-to-eat food that is prepared for immediate service in response to an individual consumer's order.

— (d) Cooling.*

— (i) Cooked potentially hazardous food shall be cooled:

— (A) Within 2 hours, from 60 degrees C (140 degrees F) to 21 degrees C (70 degrees F); and

— (B) Within 4 hours, from 21 degrees C (70 degrees F) to 5 degrees C (41 degrees F) or less; or at 7 degrees C (45 degrees F) or less as specified under 4-5(1)(f)(iii).

— (ii) Potentially hazardous food shall be cooled within 4 hours to 5 degrees C (41 degrees F) or less, or at 7 degrees C (45 degrees F) or less as specified under 4-5(1)(f)(iii) if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

— (iii) Except as specified under Subsection (iv) of this section, a potentially hazardous food received in compliance with laws allowing a temperature above 5 degrees C (41 degrees F) during shipment from the supplier as specified under Subsection 4-2(2)(a)(ii), shall be cooled within 4 hours to 5 degrees C (41 degrees F) or less, or 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii).

— (iv) Shell eggs need not comply with Subsection (iii) of this section if the eggs are placed immediately upon their receipt in

refrigerated equipment that is capable of maintaining food at 5 degrees C (41 degrees F) or less, or 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii).

— (e) Cooling Methods.

— (i) Cooling shall be accomplished in accordance with the time and temperature criteria specified under Section 4-5(1)(d) by using one or more of the following methods based on the type of food being cooled:

- (A) Placing the food in shallow pans;
- (B) Separating the food into smaller or thinner portions;
- (C) Using rapid cooling equipment;
- (D) Stirring the food in a container placed in an ice water bath;
- (E) Using containers that facilitate heat transfer;
- (F) Adding ice as an ingredient; or
- (G) Other effective methods.

— (ii) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

- (A) Arranged in the equipment to provide maximum heat transfer through the container walls; and
- (B) Loosely covered, or uncovered if protected from overhead contamination, such as splash, dust, or other contamination, during the cooling period to facilitate heat transfer from the surface of the food.

— (f) Potentially Hazardous Food, Hot and Cold Holding.*

— Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under Section 4-5(1)(i), potentially hazardous food shall be maintained:

- (i) At 60 degrees C (140 degrees F) or above; except that roasts cooked to a temperature and for a time specified under Section 4-4(3) may be held at a temperature of 54 degrees C (130 degrees F); or
- (ii) At 5 degrees C (41 degrees F) or less, except as specified under Subsection (iii) of this section, Sections 4-5(1)(g) and (h), and 5-2(4)(k).

— (iii) At 45 degrees F or between 7 degrees C (45 degrees F) and 5 degrees C (41 degrees F) in existing refrigeration equipment that is not capable of maintaining the food at 5 degrees C (41 degrees F) or less if:

- (A) The equipment is in place and in use in the food establishment; and
- (B) Within 5 years of the regulatory authority's adoption of this rule, the equipment is upgraded or replaced to maintain food at a temperature of 5 degrees C (41 degrees F) or less.

— (g) Ready to Eat, Potentially Hazardous Food, Date Marking.*

— (i) Except as specified under Subsection (v) of this section, refrigerated, ready to eat, potentially hazardous food prepared and held refrigerated for more than 24 hours in a food establishment shall be clearly marked at the time of preparation to indicate the date by which the food shall be consumed which is, including the day of preparation:

- (A) 7 calendar days or less from the day that the food is prepared, if the food is maintained at 5 degrees C (41 degrees F) or less; or
- (B) 4 calendar days or less from the day the food is prepared, if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii).

— (ii) Except as specified under Subsection (v) of this section, a ready to eat, potentially hazardous food prepared in a food establishment and subsequently frozen, shall be clearly marked:

- (A) When the food is thawed, to indicate that the food shall be consumed within 24 hours; or
- (B) When the food is placed into the freezer, to indicate the length of time before freezing that the food is held refrigerated and which is, including the day of preparation:

- (I) 7 calendar days or less from the day of preparation, if the food is maintained at 5 degrees C (41 degrees F) or less; or

—(H) 4 calendar days or less from the day of preparation, if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii); and

—(C) When the food is removed from the freezer, to indicate the date by which the food shall be consumed which is:

—(I) 7 calendar days or less after the food is removed from the freezer, minus the time before freezing, that the food is held refrigerated if the food is maintained at 5 degrees C (41 degrees F) or less before and after freezing, or

—(H) 4 calendar days or less after the food is removed from the freezer, minus the time before freezing, that the food is held refrigerated if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii) before and after freezing.

—(iii) Except as specified under Subsections (v) and (vi) of this section, a container of refrigerated, ready-to-eat potentially hazardous food, prepared and packaged by a food processing plant, shall be clearly marked at the time the original container is opened in a food establishment, to indicate the date by which the food shall be consumed which is, including the day the original container is opened:

—(A) 7 calendar days or less after the original container is opened, if the food is maintained at 5 degrees C (41 degrees F) or less; or

—(B) 4 calendar days or less from the day the original container is opened, if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii).

—(iv) Except as specified under Subsections (v) and (vi) of this section, a container of refrigerated, ready-to-eat, potentially hazardous food prepared and packaged by a food processing plant and subsequently opened and frozen in a food establishment shall be clearly marked:

—(A) When the food is thawed, to indicate that the food shall be consumed within 24 hours; or

—(B) To indicate the time between the opening of the original container and freezing that the food is held refrigerated and which is, including the day of opening the original container:

—(I) 7 calendar days or less, after opening the original container if the food is maintained at 5 degrees C (41 degrees F) or less, or

—(H) 4 calendar days or less after opening the original container if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii); and

—(C) When the food is removed from the freezer, to indicate the date by which the food shall be consumed which is:

—(I) 7 calendar days, minus the time before freezing, that the food is held refrigerated if the food is maintained at 5 degrees C (41 degrees F) or less before and after freezing, or

—(H) 4 calendar days, minus the time before freezing, that the food is held refrigerated if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii) before and after freezing.

—(v) Subsections (i) (iv) of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

—(vi) Subsections (iii) and (iv) of this section do not apply to whole, unsliced portions of a cured and processed product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing.

—(h) Ready to Eat, Potentially Hazardous Food, Disposition.*

—(i) A food specified under Subsection 4-5(1)(g)(i) shall be discarded if not consumed within:

—(A) 7 calendar days from the date of preparation if the food is maintained at 5 degrees C (41 degrees F) or less; or

—(B) 4 calendar days from the date of preparation if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii).

—(ii) A food specified under Subsection 4-5(1)(g)(ii)(A) or (iv)(A) shall be discarded if not consumed within 24 hours after thawing.

—(iii) A food specified under Subsections 4-5(1)(g)(ii)(A) and (C) or (iv)(B) and (C) shall be discarded on or before the most recent date marked on the food container or package if the food is not consumed by that date.

—(iv) A food specified under Subsection 4-5(1)(g)(iii) shall be discarded if not consumed within, including the day of opening the original container:

—(A) 7 calendar days after the date that the original package is opened in a food establishment if the food is maintained at 5 degrees C (41 degrees F) or less; or

—(B) 4 calendar days after the date that the original package is opened in a food establishment if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii).

—(v) A food specified under Subsection 4-5(1)(g)(i),(ii),(iii), or (iv) shall be discarded if the food is:

—(A) Marked with the date specified under Subsection 4-5(1)(g)(i), (ii), (iii), or (iv) and the food is not consumed before the most recent date expires;

—(B) In a container or package which does not bear a date or time; or

—(C) Inappropriately marked with a date or time that exceeds the date or time specified under Subsection 4-5(1)(g)(i), (ii), (iii), or (iv).

—(vi) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control that is activated at a temperature of:

—(A) 5 degrees C (41 degrees F) shall be discarded if not sold within 7 days; or

—(B) 7 degrees C (45 degrees F) shall be discarded if not sold within 4 days.

—(i) Time as a Public Health Control.*

—If time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption:

—(i) The food shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is removed from temperature control;

—(ii) The food shall be cooked and served, served if ready-to-eat, or discarded, within 4 hours from the point in time when the food is removed from temperature control;

—(iii) The food in unmarked containers or packages or marked to exceed a 4 hour limit shall be discarded; and

—(iv) Written procedures shall be maintained in the food establishment and made available to the regulatory authority upon request, that ensure compliance with:

—(A) Subsections (i) (iii) of this section, and

—(B) Section 4-5(1)(d) for food that is prepared, cooked, and refrigerated before time is used as a public health control.

—(2) Specialized Processing Methods:

—(a) Variance Requirement.*

—A food establishment shall obtain a variance from the regulatory authority as specified in Section 10-1(3)(a) and under Section 10-1(3)(b) before smoking or curing food; adding components such as vinegar as a method of food preservation rather than as a method of

flavor enhancement or to render a food so that it is not potentially hazardous; using a reduced oxygen method of packaging food except as specified under Section 4.5(2)(b) where a barrier to *Clostridium botulinum* in addition to refrigeration exists; custom processing animals that are for personal use as food and not for sale or service in a food establishment; or preparing food by another method that is determined by the regulatory authority to require a variance.

— (b) Reduced Oxygen Packaging, Criteria.*

— (i) A food establishment that packages food using a reduced oxygen packaging method shall have a HACCP plan that contains the information specified under Section 10.2(1)(d)(iv) and that:

— (A) Identifies the food to be packaged;

— (B) Limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:

— (I) Has an $AW(a_w)$ of 0.91 or less;

— (II) Has a PH(pH) of 4.6 or less;

— (III) Is a meat or poultry product cured at a food processing plant regulated by the U.S. Department of Agriculture using substances specified in 9 CFR 318.7 Approval of substances for use in preparation of products and 9 CFR 381.147 Restriction on the use of substances in poultry products and is received in an intact package, or

— (IV) Is a food with a high level of competing organisms such as raw meat or raw poultry;

— (C) Specifies methods for maintaining food at 5 degrees C (41 degrees F) or below;

— (D) Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

— (I) Maintain the food at 5 degrees C (41 degrees F) or below, and

— (II) Discard the food if within 14 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;

— (E) Limits the shelf life to no more than 14 calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first;

— (F) Includes operational procedures that:

— (I) Prohibit contacting food with bare hands;

— (II) Identify a designated area and the method by which the physical barriers or methods of separation of raw foods and ready-to-eat foods or non-food such as chemicals are minimized to prevent cross contamination, and access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation, and

— (III) Delineate cleaning and sanitization procedures for food-contact surfaces; and

— (G) Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:

— (I) Concepts required for a safe operation;

— (II) Equipment and facilities; and

— (III) Procedures specified under Subsection (i)(F) of this section and Subsection 10.2(1)(d)(iv).

— (ii) Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

— 4.6. Food Identity, Presentation, and On-Premise Labeling.

— (1) Accurate Representation.

— (a) Standards of Identity.

— Packaged foods shall comply with standards of identity, including 21 CFR 131.169 and 9 CFR 319 Definitions and Standards of Identity

or Composition, and the general requirements of 21 CFR 130 Food Standards: General and 9 CFR 319 Subpart A General.

— (b) Honestly Presented.

— (i) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

— (ii) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of food.

— (2) Labeling.

— (a) Food Labels.

— (i) Food packaged in a food establishment shall be labeled according to law, including 21 CFR 101 Food Labeling, 9 CFR 317 Labeling, Marking Devices, and Containers.

— (ii) Food that is not packaged need not be labeled unless a health or nutrient claim is made, except as specified in Subsection (iii).

— (ii) Label information shall include:

— (A) The common name of the food, or absent a common name, an adequately descriptive identity statement;

— (B) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

— (C) An accurate declaration of the net quantity of contents;

— (D) The name and place of business of the manufacturer, packer, or distributor; and

— (E) Except as exempted in the Federal Food, Drug, and Cosmetic Act, Section 403(Q)(3)-(5), nutrition labeling as specified in 21 CFR 101 Food Labeling and 9 CFR 317 Subpart B Nutrition Labeling.

— (iii) Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:

— (A) The manufacturer's or processor's label that was provided with the food; or

— (B) A card, sign, or other method of notification that includes the information specified under Subsections (ii)(A) and (B) of this section.

— (I) The ingredient statement shall be printed in type size not less than 1/8 inch in height and shall be easily legible.

— (II) Bulk food bins are exempt from nutritional labeling provided that a health, nutrient content, or other claim is not made in any context on the label or advertising.

— (b) Full-service Food, Wrapped or Unwrapped.

— Food items which are accessible to customers only through employee assistance, such as products from delis, bakeries, candy counters, etc., need not be labeled with ingredient information. However, complete and correct ingredient information for all products offered for sale shall be:

— (A) Readily available to all store personnel in case of consumer questions. This information must be accurate and kept current for the benefit of any customer who may need it.

— (B) Any nutrition or health information or claims about any such product also mandates the availability of Nutrition Facts for that product.

— (c) Other Forms of Information.

— (i) If required by law, consumer warnings shall be provided.

— (ii) Food establishment or manufacturers' dating information on foods may not be concealed or altered.

— (iii) Food not intended for human consumption in a storage warehouse shall be conspicuously labeled, "Inedible - Not For Human Consumption."

— (d) Labeling Requirements of Refrigerated Foods.

— (i) Except as specified under Subsection (iv) of this section, highly perishable, packaged, processed foods and shipping containers

which contain these products that must be refrigerated for safety reasons shall be labeled in the following manner:

— (A) "IMPORTANT, Must Be Kept Refrigerated", in the following format:

— (I) The statement should be set off by the use of hairlines at the top and bottom of the statement area. The type should be on a clear contrasting background. All type should utilize a single easy-to-read style and size, have at least one point leading and ensure that letters should never touch. The word "IMPORTANT" shall be in all capital letters. The rest of the statement shall capitalize the first letter in each word.

— (II) The "IMPORTANT Must Be Kept Refrigerated" statement shall be placed in a clear and prominent place on the label.

— (B) If these products are frozen for storage and distribution only, they shall still bear the "IMPORTANT Must Be Kept Refrigerated" statement after they are thawed for refrigerated marketing.

— (ii) Food products intended to be refrigerated, that do not pose a safety hazard if temperature abused shall bear the "Keep Refrigerated" statement. Products that possess one or more of the following attributes could be considered products that would not cause a public health hazard if improperly handled:

— (A) Product has a pH less than 4.6; or

— (B) Water activity that is 0.85 or less; or

— (C) Receives a thermal process adequate to inactivate foodborne pathogens which could, through persistence or growth in the product, cause a health hazard under moderate condition of temperature abuse during storage and distribution; or

— (D) None of the above, but has a barrier(s) imparted by either intrinsic or extrinsic factors scientifically demonstrated to eliminate foodborne pathogens or prevent their growth. Combinations of individual barriers in some products may provide a synergistic inhibitory effect which is greater than achieved by the use of a single barrier alone.

— (iii) Products that are shelf stable until opening, but need refrigeration after opening shall bear the label statement "Refrigerate after opening" or variation thereof.

— (iv) These labeling requirements need not apply to food products traditionally sold under refrigeration, such as dairy products; cured meats; poultry and seafood; or raw uncut agricultural commodities.

— (v) Deviations from this specific wording in (i) through (iv) of this section must be reviewed by the Utah Department of Agriculture and Food before being used on product labels.

— (3) Consumer Advisory:

— Consumption of Raw or Undercooked Animal Foods.*

— (i) If a raw or undercooked animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is offered in a ready-to-eat form as a deli, menu, vended, or other item; or as a raw ingredient in another ready-to-eat food, the owner may inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means of the significantly increased risk associated with certain especially vulnerable consumers eating such foods in raw or undercooked form.

— (ii) The following language will satisfy the consumer advisory requirements. "Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of foodborne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information".

— 4.7. Contamination.

— Disposition:

— (a) ~~Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food.*~~

— (i) ~~A food that is unsafe, adulterated, or not honestly presented shall be reconditioned according to a procedure approved by the regulatory authority or discarded.~~

— (ii) ~~Food that is not from an approved source as specified under Sections 4-2(1) shall be discarded.~~

— (iii) ~~Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded shall be discarded.~~

— (iv) ~~Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.~~

— 4.8. Additional Safeguards:

— Pasteurized Foods, Prohibited Reservice, and Prohibited Food.*

— In a food establishment that serves a highly susceptible population:

— (i) ~~Apple juice, apple cider, and other beverages containing apple juice served to a highly susceptible population shall be obtained pasteurized, or in a commercially sterile shelf-stable form in a hermetically sealed container;~~

— (ii) ~~Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:~~

— (A) ~~Foods such as Caesar salad, hollandaise or bernaise sauce, mayonnaise, egg nog, ice cream, and egg fortified beverages; and~~

— (B) ~~Eggs that are broken, combined in a container, and not cooked immediately or eggs that are held before service following cooking;~~

— (iii) ~~Food in an unopened original package may not be re-served; and~~

— (iv) ~~Raw animal food such as raw, raw marinated fish; raw molluscan shellfish; steak tartare; or a partially cooked food such as lightly cooked fish, rare meat; and soft-cooked eggs may not be served or offered for sale in a ready-to-eat form.~~

R70-530-5. Equipment, Utensils, and Linens.

— 5.1. Materials for Construction and Repair.

— (1) Multiuse.

— (a) Characteristics.*

— Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:

— (i) Safe;

— (ii) Durable, corrosion resistant, and nonabsorbent;

— (iii) Sufficient in weight and thickness to withstand repeated warewashing;

— (iv) Finished to have a smooth, easily cleanable surface; and

— (v) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

— (b) Cast Iron, Use Limitation:

— (i) ~~Cast iron may not be used for utensils or food-contact surfaces of equipment except as specified in Subsections (ii) and (iii) of this section.~~

— (ii) ~~Cast iron may be used as a surface for cooking.~~

— (iii) ~~Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.~~

— (c) ~~Lead in Ceramic, China, and Crystal Utensils, Use Limitation.~~

— Ceramic, china, crystal utensils, and decorative utensils such as hand painted ceramic or china that are used in contact with food shall be lead free or contain levels of lead not exceeding the limits of the following utensil categories:

TABLE 4

Utensil Category	Description	Maximum Lead (mg/L)
Hot Beverage Mugs	Coffee Mugs	0.5
Large Hollowware	Bowls > 1.1 L (1.16 QT)	1
Small Hollowware	Bowls < 1.1 L (1.16 QT)	2.0
Flat Utensils	Plates, Saucers	3.0

- (d) Copper, Use Limitation.*
 - (i) Except as specified in Subsection (ii) of this section, copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.
 - (ii) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the pre-fermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.
- (e) Galvanized Metal, Use Limitation.*
 - Galvanized metal may not be used for utensils or food contact surfaces of equipment that are used in contact with acidic foods.
- (f) Sponges, Use Limitation.
 - Sponges may not be used in contact with cleaned and sanitized or in-use food contact surfaces.
- (g) Lead in Pewter Alloy, Use Limitation.
 - Pewter alloy containing lead in excess of 0.05% may not be used as a food contact surface.
- (h) Lead in Solder and Flux, Use Limitation.
 - Solder and flux containing lead in excess of 0.2% may not be used on surfaces that contact food.
- (i) Wood, Use Limitation.
 - (i) Wood and wood wicker may not be used as a food contact surface, except as specified in Subsections (ii), (iii), and (iv) of this section;
 - (ii) Hard maple or an equivalently hard, close-grained wood may be used for:
 - (A) Cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and
 - (B) Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110 degrees C (230 degrees F) or above.
 - (iii) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.
 - (iv) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:
 - (A) Untreated wood containers; or
 - (B) Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 Preservatives for wood.
- (j) Nonfood Contact Surfaces.
 - Nonfood contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be

- constructed of a durable, corrosion-resistant, nonabsorbent, and smooth material.
- (k) Nonstick Coatings, Use Limitation.
 - Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.
- (2) Single Service and Single Use.
 - Characteristics.*
 - Materials that are used to make single-service and single-use articles:
 - (i) May not:
 - (A) Allow the migration of deleterious substances; or
 - (B) Impart colors, odors, or tastes to food; and
 - (ii) Shall be:
 - (A) Safe; and
 - (B) Clean.
- 5-2. Design and Construction.
 - (1) Durability and Strength.
 - (a) Equipment and Utensils.
 - Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.
 - (b) Food Temperature Measuring Devices.*
 - Food temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.
 - (2) Cleanability.
 - (a) Food Contact Surfaces.*
 - Multiuse food contact surfaces shall be:
 - (i) Smooth;
 - (ii) Free of breaks, open seams, cracks, chips, pits, and similar imperfections;
 - (iii) Free of sharp internal angles, corners, and crevices;
 - (iv) Finished to have smooth welds and joints; and
 - (v) Accessible for cleaning and inspection by one of the following methods:
 - (A) Without being disassembled;
 - (B) By disassembling without the use of tools; or
 - (C) By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screw drivers, pliers, open-end wrenches and Allen wrenches that are kept near the equipment.
 - (b) CIP Equipment.
 - (i) CIP equipment shall meet the characteristics specified under Section 5-2(2)(a) cleanability of food contact surfaces, and shall be designed and constructed so that:
 - (A) Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food contact surfaces; and
 - (B) The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions; and
 - (ii) CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food contact surfaces throughout the fixed system are being effectively cleaned.
 - (c) "V" Threads, Use Limitation.
 - "V" type threads may not be used on food contact surfaces. This section does not apply to hot oil cooking or filtering equipment.
 - (d) Hot Oil Filtering Equipment.

— Hot oil filtering equipment shall meet the characteristics specified under Section 5-2(2)(a) or Section 5-2(2)(b) and shall be readily accessible for filter replacement and cleaning of the filter.

— (e) Can Openers.

— Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

— (f) Nonfood Contact Surfaces.

— Nonfood contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

— (g) Kick Plates, Removable.

— Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

— (i) Removable by one of the methods specified in Subsections 5-2(2)(a)(v)(A) through (C) or capable of being rotated open; and

— (ii) Removable or capable of being rotated open without unlocking equipment doors.

— (h) Ventilation Hood Systems, Filters.

— Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

— (3) Accuracy.

— Temperature Measuring Devices, Food.

— (i) Food temperature measuring devices that are sealed only in Celsius or dually sealed in Celsius and Fahrenheit shall be accurate to ± 1 degrees C in the intended range of use.

— (ii) Food temperature measuring devices that are sealed only in Fahrenheit shall be accurate to ± 2 degrees F in the intended range of use.

— (b) Temperature Measuring Devices, Ambient Air and Water.

— (i) Ambient air and water temperature measuring devices that are sealed in Celsius or dually sealed in Celsius and Fahrenheit shall be designed to be easily readable and accurate to ± 1.5 degrees C (2.7 degrees F) in the intended range of use range.

— (ii) Ambient air and water temperature measuring devices that are sealed only in Fahrenheit shall be accurate to ± 3 degrees F in the intended range of use.

— (e) Pressure Measuring Devices, Mechanical Warewashing Equipment.

— Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 7 kilopascals (1 pounds per square inch) or smaller and shall be accurate to ± 14 kilopascals (± 2 pounds per square inch) in the 100-170 kilopascals (15-25 pounds per square inch) range.

— (4) Functionality.

— (a) Ventilation Hood Systems, Drip Prevention.

— Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

— (b) Equipment Openings, Closures and Deflectors.

— (i) A cover or lid for equipment shall overlap the opening and be sloped to drain.

— (ii) An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters ($\frac{2}{10}$ of an inch).

— (iii) Fixed piping, temperature measuring devices, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment, except as specified under Subsection (iv) of this section.

— (iv) If a watertight joint is not provided:

— (A) The piping, temperature measuring devices, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from food openings; and

— (B) The opening shall be flanged as specified under Subsection (ii) of this section.

— (e) Dispensing Equipment, Protection of Equipment and Food.

— In equipment that dispenses or vends liquid food or ice in unpackaged form:

— (i) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;

— (ii) The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;

— (iii) The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

— (A) Located in an outside area that does not otherwise afford protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

— (B) Available for self-service during hours when it is not under the full-time supervision of a food employee; and

— (iv) The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

— (d) Vending Machines, Vending Stage Closure.

— The dispensing compartment of vending machines including a machine that is designed to vend prepackaged snack foods that is not potentially hazardous such as chips, party mixes, and pretzels shall be equipped with a self-closing door or cover if the machine is:

— (i) Located in an outside area that does not otherwise afford protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

— (ii) Available for self-service during hours when it is not under the full-time supervision of a food employee.

— (e) Bearings and Gear Boxes, Leakproof.

— Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

— (f) Beverage Tubing, Separation.

— Beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice. This section does not apply to cold plates that are constructed integrally with an ice storage bin.

— (g) Ice Units, Separation of Drains.

— Liquid waste drain lines may not pass through an ice machine or ice storage bin.

— (h) Condenser Unit, Separation.

— If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

— (i) Can Openers on Vending Machines.

— Cutting or piercing parts of can openers on vending machines shall be protected from manual contact, dust, insects, rodents, and other contamination.

— (j) Molluscan Shellfish Tanks.

— (i) Molluscan shellfish life support system display tanks may only be used to display shellfish that are not offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only, except as specified under Subsection (ii) of this section.

— (ii) Molluscan shellfish life support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in accordance with a variance granted by a regulatory authority as specified under 10-1(3)(a) and a HACCP plan that:

— (A) Is submitted by the owner or person in charge as specified under 10-1(3)(b); and

— (B) Ensure that:

— (I) Water used with fish other than molluscan shellfish does not flow into the molluscan tank;

— (II) The safety and quality of the shellfish as they were received are not compromised by use of the tank, and

— (III) The identity of the source of the shellstock is retained as specified under Section 4-2(2)(j).

— (k) Vending Machines, Automatic Shutoff.*

— (i) A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food:

— (A) If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that can not maintain food temperatures as specified under Chapter 4; and

— (B) If a condition specified in Subsection (i)(A) of this section occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Chapter 4.

— (ii) When the automatic shutoff within a machine vending potentially hazardous food is activated:

— (A) In a refrigerated vending machine, the ambient temperature may not exceed 5 degrees C (41 degrees F) or 7 degrees C (45 degrees F) as specified under Subsection 4-5(1)(f)(iii) for no more than 30 minutes immediately after the machine is filled, serviced, or restocked; or

— (B) In a hot holding vending machine, the ambient temperature may not be less than 60 degrees C (140 degrees F) for more than 120 minutes after the machine is filled, serviced, or restocked.

— (l) Temperature Measuring Devices.

— (i) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

— (ii) Cold or hot holding equipment used for potentially hazardous food shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display, except as specified in Subsection (iii) of this section.

— (iii) Subsection (ii) of this section does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers, and salad bars.

— (iv) Temperature measuring devices shall be designed to be easily readable.

— (v) Food temperature measuring devices shall have a numerical scale, printed record, or digital readout in increments no greater than 1 degrees C or 2 degrees F in the intended range of use.

— (m) Warewashing Machines, Sanitizer Level Indicator.

— A warewashing machine that uses a chemical for sanitization and that is installed after adoption of this rule by the regulatory authority, shall be equipped with a device that indicates audibly or visually when more chemical sanitizer needs to be added.

— (n) Warewashing Machine, Data Plate Operating Specifications.

— A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications including the:

— (i) Temperatures required for washing, rinsing, and sanitizing;

— (ii) Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and

— (iii) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

— (o) Warewashing Machines, Internal Baffles.

— Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

— (p) Warewashing Machines, Temperature Measuring Devices.

— A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water:

— (i) In each wash and rinse tank; and

— (ii) As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.

— (q) Manual Warewashing Equipment, Heaters and Baskets.

— If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be:

— (i) Designed with an integral heating device that is capable of maintaining water at a temperature not less than 77 degrees C (171 degrees F); and

— (ii) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

— (r) Warewashing Machines, Flow Pressure Device.

— (i) Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine; and

— (ii) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a 6.4 millimeter or 1/4 inch Iron Pipe Size (IPS) valve.

— (iii) Subsections (i) and (ii) of this section do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

— (s) Warewashing Sinks and Drainboards, Self Draining.

— Sinks and drainboards of warewashing sinks and machines shall be self draining.

— (t) Equipment Compartments, Drainage.

— Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

— (u) Vending Machines, Liquid Waste Products.

— (i) Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

— (ii) Vending machines that dispense liquid food in bulk shall be:

— (A) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

—(B) Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

—(iii) Shutoff devices specified in Subsection (ii)(B) of this section shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

—(v) Case Lot Handling Equipment, Moveability.

—Equipment, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

—(w) Vending Machine Doors and Openings.

—(i) Vending machine doors and access opening covers to food and container storage spaces shall be tight fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1.5 millimeters or 1/16 inch by:

—(A) Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than 1.5 millimeters or 1/16 inch. Screening of 12 or more mesh to 2.5 centimeters (12 mesh to 1 inch) meets this requirement;

—(B) Being effectively gasketed;

—(C) Having interface surfaces that are at least 13 millimeters or 1/2 inch wide; or

—(D) Jamb or surfaces used to form an L-shaped entry path to the interface.

—(ii) Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or 1/16 inch.

—(x) Restraining of Pressurized Containers

—Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over.

—(y) Food Equipment, Certification and Classification.

—Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI) accredited certification program will be deemed to comply with Sections 5-1 and 5-2 of this chapter.

—5-3. Numbers and Capacity.

—(1) Equipment.

—(a) Cooling, Heating, and Holding Capacities.

—Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under Chapter 4.

—(b) Manual Warewashing, Sink Compartment Requirements.

—(i) A sink with at least 3 compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils, except as specified in Subsection (iii) of this section.

—(ii) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in Subsection (iii) of this section shall be used.

—(iii) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and the regulatory authority has approved the use of the alternative equipment. Alternative manual warewashing equipment may include:

—(A) High pressure detergent sprayers;

—(B) Low or line pressure spray detergent foamers;

—(C) Other task specific cleaning equipment;

—(D) Brushes or other implements;

—(E) Receptacles that substitute for the compartments of a multicompartment sink if approved by the regulatory authority.

—(c) Drainboards.

—Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.

—(d) Ventilation Hood Systems, Adequacy.

—Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

—(e) Clothes Washers and Dryers.

—(i) If work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used, except as specified in Subsection (ii) of this section;

—(ii) If on premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air dried as specified under Section 5-9(1)(b), a mechanical clothes washer and dryer need not be provided.

—(2) Utensils, Temperature Measuring Devices, and Testing Devices

—(a) Utensils, Consumer Self-Service.

—A food dispensing utensil shall be available for each display container displayed at a consumer self-service unit such as a buffet or salad bar.

—(b) Food Temperature Measuring Devices.

—Food temperature measuring devices shall be provided and readily accessible for use in assuring attainment and maintenance of food temperatures as specified under Chapter 4.

—(c) Temperature Measuring Devices, Manual Warewashing.

—In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

—(d) Sanitizing Solutions, Testing Devices.

—A test kit or other device that accurately measures the concentration in mg/L of sanitizing solutions shall be provided.

—5-4. Location and Installation.

—(1) Location.

—Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention.

—(i) Except as specified in Subsection (ii) of this section, equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single service and single use articles may not be located:

—(A) In locker rooms;

—(B) In toilet rooms;

—(C) In garbage rooms;

—(D) In mechanical rooms;

—(E) Under sewer lines that are not shielded to intercept potential drips;

—(F) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

—(G) Under open stairwells; or

—(H) Under other sources of contamination.

—(ii) A storage cabinet used for linens or single service or single use articles may be stored in a locker room.

—(iii) If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed food, clean equipment, utensils, and linens; and unwrapped single service and single use articles. Separate

rooms shall be provided for laundry facilities, except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

— (2) Installation.

— (a) Fixed Equipment, Spacing or Sealing:

— (i) Equipment that is fixed because it is not easily movable shall be installed so that it is:

— (A) Spaced to allow access for cleaning along the sides, behind, and above the unit;

— (B) Spaced from adjoining equipment, walls, and ceilings a distance of not more than 1 millimeter or 1/32 inch; or

— (C) Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

— (ii) Table-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

— (A) Sealed to the table; or

— (B) Elevated on legs as specified under Subsection 5-4(2)(iv).

— (b) Fixed Equipment, Elevation or Sealing:

— (i) Floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 15 centimeter (6 inches) clearance between the floor and the equipment, except as specified in Subsection (ii) and (iii) of this section.

— (ii) If no part of the floor under the floor-mounted equipment is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches).

— (iii) This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.

— (iv) Table-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 10 centimeter (4 inches) clearance between the table and the equipment, except as specified in Subsection (v) of this section.

— (v) The clearance space between the table and table-mounted equipment may be:

— (A) 7.5 centimeters (3 inches) if the horizontal distance of the table top under the equipment is no more than 50 centimeters (20 inches) from the point of access for cleaning; or

— (B) 5 centimeters (2 inches) if the horizontal distance of the table top under the equipment is no more than 7.5 centimeters (3 inches) from the point of access for cleaning.

— (c) Aisles and Working Spaces:

— Aisles and working spaces between units of equipment and between equipment and walls, shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact. All easily-movable storage equipment such as dollies, skids, racks, and opened-ended pallets shall be positioned to provide accessibility to working areas.

— 5-5. Maintenance and Operation:

— (1) Equipment:

— (a) Good Repair and Proper Adjustment:

— (i) Equipment shall be maintained in a state of good repair and condition that meets the requirements specified in Sections 5-1 and 5-2.

— (ii) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturers' specifications.

— (iii) Cutting or piercing parts of can openers shall be kept sharp to eliminate the creation of metal fragments that can contaminate food when the container is opened.

— (b) Cutting Surfaces:

— Surfaces such as cutting blocks and boards that are subject to scratching and searing shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

— (c) Warewashing Equipment, Cleaning Frequency:

— A warewashing machine, the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths, and drainboards or other equipment used to substitute for drainboards, shall be cleaned:

— (i) Before use;

— (ii) Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and

— (iii) If used, at least every 24 hours.

— (d) Warewashing Machines, Manufacturers' Operating Instructions:

— (i) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

— (ii) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

— (e) Warewashing Sinks, Use Limitation:

— (i) A warewashing sink may not be used for hand washing or dumping mop water.

— (ii) If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under Section 5-5(1)(c) before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under Section 5-7 before and after using the sink to wash produce or thaw food.

— (f) Warewashing Equipment, Cleaning Agents:

— When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment, shall, when used for warewashing, contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

— (g) Warewashing Equipment, Clean Solutions:

— The wash, rinse, and sanitize solutions shall be maintained clean.

— (h) Manual Warewashing Equipment, Wash Solution Temperature:

— The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 43 degrees C (110 degrees F) unless a different temperature is specified on the cleaning agent manufacturer's label instructions.

— (i) Mechanical Warewashing Equipment, Wash Solution Temperature:

— (i) The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:

— (A) For a stationary rack, single temperature machine, 74 degrees C (165 degrees F);

— (B) For a single tank, conveyor, dual temperature machine, 71 degrees C (160 degrees F);

— (C) For a stationary rack, dual temperature machine, 66 degrees C (150 degrees F); or

— (D) For a multitank, conveyor, multitemperature machine, 66 degrees C (150 degrees F).

—(ii) The temperature of the wash solution in spray type warewashers that use chemicals to sanitize may not be less than 49 degrees C (120 degrees F).

—(j) Manual Warewashing Equipment, Hot Water Sanitization Temperatures.*

—If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at 77 degrees C (171 degrees F) or above.

—(k) Mechanical Warewashing Equipment, Hot Water Sanitization Temperatures:

—(i) Except as specified in Subsection (ii) of this section, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 90 degrees C (194 degrees F), or less than:

—(A) For a stationary rack, single temperature machine, 74 degrees C (165 degrees F); or

—(B) For all other machines, 82 degrees C (180 degrees F).

—(ii) The maximum temperature specified under Subsection (i) of this section, does not apply to the high pressure and temperature systems with wand type, hand-held, spraying devices used for the in- place cleaning and sanitizing of equipment such as meat saws.

—(l) Mechanical Warewashing Equipment, Sanitization Pressure.

—The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine may not be less than 100 kilopascals (15 pounds per square inch) or more than 170 kilopascals (25 pounds per square inch) as measured in the water line immediately upstream from the fresh hot water sanitizing rinse control valve.

—(m) Manual and Mechanical Warewashing Equipment, Chemical Sanitization Temperature, pH, Concentration, and Hardness.*

—A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at exposure times specified in Subsection 5-7(3)(iii) shall be listed in 21 CFR 178.1010 Sanitizing solutions, shall be used in accordance with the EPA approved manufacturer's label use instructions, and shall be used as follows:

—(i) A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following table:

TABLE 5

Minimum Concentration (mg/L) deg F (deg C)	Minimum Temperature	
	pH 10 or less	pH 8 or less
	deg F (deg C)	deg F (deg C)
25	120 (49)	120 (49)
50	100 (38)	75 (24)
100	55 (13)	55 (13)

—(ii) An iodine solution shall have a:

—(A) Minimum temperature of 24 degrees C (75 degrees F);

—(B) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective, and

—(C) Concentration between 12.5 mg/L and 25 mg/L;

—(iii) A quaternary ammonium compound solution shall:

—(A) Have a minimum temperature of 24 degrees C (75 degrees F);

—(B) Have a concentration as specified under Section 8-2(4)(a) and as indicated by the manufacturer's use directions included in the labeling, and

—(C) Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the manufacturer's label;

—(iv) If another solution of a chemical specified under Subsections (i) through (iii) of this section is used, the person in charge shall demonstrate to the regulatory authority that the solution achieves sanitization and the use of the solution shall be approved; or

—(v) If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the manufacturer's use directions included in the labeling.

—(n) Warewashing Equipment, Determining Chemical Sanitizer Concentration:

—Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

—(2) Utensils and Temperature Measuring Devices:

—(a) Good Repair and Proper Calibration.

—(i) Utensils shall be maintained in a state of repair or condition that complies with the requirements specified in Sections 5-1 and 5-2 or shall be discarded.

—(ii) Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

—(iii) Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

—(b) Food establishments without proper ware washing facilities.

—Food establishments that do not have facilities for proper cleaning and sanitizing of utensils and equipment shall not prepare or package food or dispense unpackaged food other than raw fruits and raw vegetables which have not been processed.

—(c) Bulk Food Sections:

—Food establishments with bulk food sections shall have facilities or equipment conveniently available, either in a servicing area or in place to provide for proper cleaning and sanitizing of all food contact surfaces including product modules, lids and dispensing utensils.

—(d) Single Service and Single Use Articles, Required Use.*

—If approved by the UDAF a food establishment without facilities specified in Sections 5-6 and 5-7 for cleaning and sanitizing kitchenware and tableware may provide only single use kitchenware, single service articles, and single use articles for use by food employees and single service articles for use by the consumer.

—(e) Single Service and Single Use Articles, Reuse Limitation:

—(i) Single service and single use articles may not be reused. Articles such as number 10 cans, aluminum pie pans, egg containers, bread wrappers, and similar articles into which food has been packaged by the manufacturers shall not be used as single service or multi use articles.

—(ii) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than 1 inch protruding from the chilled dispensing head.

—(f) Shells, Use Limitation:

—Mollusk and crustacea shells may not be used more than once as serving containers.

—5-6. Cleaning of Equipment and Utensils.

—(1) Objective:

—Equipment, Food Contact Surfaces, Nonfood Contact Surfaces, and Utensils.*

—(i) Equipment food contact surfaces and utensils shall be clean to sight and touch.

—(ii) The food contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

— (iii) Nonfood contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

— (2) Frequency.

— Equipment Food Contact Surfaces and Utensils.*

— (i) Equipment food contact surfaces and utensils shall be cleaned:

— (A) Before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry, except as specified in Subsection (ii) of this section;

— (B) Each time there is a change from working with raw foods to working with ready to eat foods;

— (C) Between uses with raw fruits or vegetables and with potentially hazardous food;

— (D) Before using or storing a food temperature measuring device; and

— (E) At any time during the operation when contamination may have occurred.

— (ii) Subsection (ii)(A) of this section does not apply if raw animal foods that require cooking temperatures specified under Subsection 4-4(1)(a)(i)(C) are prepared after foods that require cooking temperatures specified under Subsections 4-4(1)(a)(i)(A) and (B) and 4-4(1)(a)(ii).

— (iii) If used with potentially hazardous food, equipment food contact surfaces and utensils shall be cleaned throughout the day at least every 4 hours, except as specified in Subsection (iv) of this section.

— (iv) Surfaces of utensils and equipment contacting food may be cleaned less frequently than every 4 hours if:

— (A) In storage, containers of potentially hazardous food and their contents are maintained at temperatures specified under Chapter 4 and the containers are cleaned when they are empty;

— (B) Utensils and equipment are used to prepare food in a refrigerated room that maintains the utensils, equipment, and food under preparation at temperatures specified under Chapter 4 and the utensils and equipment are cleaned at least every 24 hours;

— (C) Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready to eat potentially hazardous food that is maintained at the temperatures specified under Chapter 4, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;

— (D) Temperature measuring devices are maintained in contact with foods, such as when left in a container of deli food or in a roast, held at temperatures specified under Chapter 4; or

— (E) Equipment is used for storage of packaged or unpackaged food such as a reach in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues; or

— (F) The cleaning schedule is approved based on consideration of:

— (I) Characteristics of the equipment and its use;

— (II) The type of food involved;

— (III) The amount of food residue accumulation, and

— (IV) The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease.

— (v) Except when dry cleaning methods are used as specified under Section 5-6(3)(a), surfaces of utensils and equipment contacting food that is not potentially hazardous shall be cleaned:

— (A) At any time when contamination may have occurred;

— (B) At least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;

— (C) Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers;

— (D) Equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, beverage dispensing lines or tubes, coffee bean grinders, and water vending equipment:

— (I) At a frequency specified by the manufacturer, or

— (II) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

— (b) Cooking and Baking Equipment.

— (i) The food contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified under Subsection 5-6(2)(iv)(E).

— (ii) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

— (c) Nonfood Contact Surfaces.

— Nonfood contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

— (3) Methods.

— (a) Dry Cleaning.

— (i) If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not potentially hazardous.

— (ii) Cleaning equipment used in dry cleaning food contact surfaces may not be used for any other purpose.

— (b) Preecleaning.

— (i) Food debris on equipment and utensils shall be scrapped over a waste disposal unit, scupper, or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

— (ii) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

— (c) Loading of Soiled Items, Warewashing Machines.

— Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

— (i) Exposes the items to the unobstructed spray from all eyes; and

— (ii) Allows the items to drain.

— (d) Wet Cleaning.

— (i) Equipment food contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high pressure sprays; or ultrasonic devices.

— (ii) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

— (e) Washing, Procedures for Alternative Manual Warewashing Equipment.

— If washing in sink compartments or a warewashing machine is impractical such as when the equipment is fixed or the utensils are too large, washing shall be done by using alternative manual warewashing equipment as specified in Subsection 5-3(1)(b)(iii) in accordance with the following procedures:

— (i) Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;

— (ii) Equipment components and utensils shall be scrapped or rough cleaned to remove food particle accumulation; and

— (iii) Equipment and utensils shall be washed as specified under Subsection 5-6(3)(d)(i).

—(f) Rinsing Procedures.

Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent sanitizer solution by using one of the following procedures:

—(i) Use of a distinct, separate water rinse after washing and before sanitizing if using:

—(A) A 3-compartment sink;

—(B) Alternative manual warewashing equipment equivalent to a 3-compartment sink as specified under Subsection 5-1(b)(iii)(A), or

—(C) A 3-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment;

—(ii) Use of a detergent sanitizer if using:

—(A) Alternative warewashing equipment as specified in Subsection 5-3(1)(b)(iii) that is approved for use with a detergent sanitizer, or

—(B) A warewashing system for CIP equipment;

—(iii) If using a warewashing machine that does not recycle the sanitizing solution as specified under Subsection (iv) of this section, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse that is:

—(A) Integrated in the application of the sanitizing solution, and

—(B) Wasted immediately after each application; or

—(iv) If using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

—(g) Returnables, Cleaning for Refilling.*

—(i) Returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant, except as specified in Subsections (ii) and (iii) of this section.

—(ii) A food-specific container for beverages may be refilled at a food establishment if:

—(A) Only a beverage that is not a potentially hazardous food is used as specified under Subsection 4-3(4)(g);

—(B) The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;

—(C) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided;

—(D) The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and

—(E) The container is refilled by:

—(I) An employee of the food establishment, or

—(II) The owner of the container if the beverage system includes a contamination-free transfer process that can not be bypassed by the container owner.

—5-7. Sanitization of Equipment and Utensils.

—(1) Objective.

Food-Contact Surfaces and Utensils.*

Equipment food-contact surfaces and utensils shall be sanitized.

—(2) Frequency.

Before Use After Cleaning.

Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.

—(3) Methods.

Hot Water and Chemical.*

After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

—(i) Hot water manual operations by immersion for at least 30 seconds in water whose temperature is maintained at 77 degrees C (170 degrees F) or above.

—(ii) Hot water mechanical operations by being cycled through equipment that is set up as specified under Sections 5-5(1)(d) and 5-5(1)(h) and (i) and achieving a utensil surface temperature of 71 degrees C (160 degrees F) as measured by an irreversible registering temperature indicator; or

—(iii) Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under Section 5-5(1)(m) by providing:

—(A) An exposure time of at least 10 seconds for a chlorine solution;

—(B) An exposure time of at least 30 seconds for other chemical sanitizer solutions; or

—(C) An exposure time used in relationship with a combination of temperature, concentration, and pH that yields sanitization.

—5-8. Laundering.

—(1) Clean Linens.

Clean linens shall be free from food residues and other soiling matter.

—(2) Specifications.

—(i) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

—(ii) Cloth gloves specified in Subsection 4-3(4)(e)(iv) shall be laundered before being used with a different type of raw animal food such as beef, lamb, pork, and fish.

—(iii) Linens that are used for food service and cloth napkins shall be laundered between each use.

—(iv) Wet wiping cloths shall be laundered before being used with a fresh solution of cleanser or sanitizer.

—(v) Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

—(3) Methods.

—(a) Storage of Soiled Linens.

Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

—(b) Mechanical Washing.

—(i) Linens shall be mechanically washed, except as specified in Subsection (ii) of this section.

—(ii) In food establishments in which only wiping cloths are laundered as specified in Subsection 5-3(1)(e)(ii), the wiping cloths may be laundered in a mechanical washer, a sink designated only for laundering wiping cloths, or a warewashing or food-preparation sink that is cleaned as specified under Section 5-5(1)(e).

—(c) Use of Laundry Facilities.

—(i) Laundry facilities on the premises of a food establishment shall be used only for the washing and drying of items used in the operation of the establishment, except as specified in Subsection (ii) of this section.

—(ii) Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food establishment items.

— 5.9. Protection of Clean Items.

— (1) Drying.

— (a) Equipment and Utensils, Air Drying Required.

— After cleaning and sanitizing, equipment and utensils:

— (i) Shall be air dried or used after adequate draining as specified in Subsection (a) of 21 CFR 178.1010 Sanitizing solutions, before contact with food; and

— (ii) May not be cloth dried except that utensils that have been air dried may be polished with cloths that are maintained clean and dry.

— (b) Wiping Cloths, Air Drying Locations.

— Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in Subsection 5-3(1)(e)(ii) shall be air dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single service and single use articles and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under Section 5-5(1)(m).

— (2) Lubricating and Reassembling.

— (a) Food Contact Surfaces.

— Lubricants shall be applied to food contact surfaces that require lubrication in a manner that does not contaminate food contact surfaces. The use of food grade lubricants is acceptable.

— (b) Equipment.

— Equipment shall be reassembled so that food contact surfaces are not contaminated.

— (3) Storing.

— (a) Equipment, Utensils, Linens, and Single Service and Single Use Articles.

— (i) Except as specified in Subsection (iv) of this section, cleaned equipment and utensils, laundered linens, and single service and single use articles shall be stored:

— (A) In a clean, dry location;

— (B) Where they are not exposed to splash, dust, or other contamination; and

— (C) At least 15 cm (6 inches) above the floor.

— (ii) Clean equipment and utensils shall be stored as specified under Subsection (i) of this section and shall be stored:

— (A) In a self draining position that permits air drying; and

— (B) Covered or inverted.

— (iii) Single service and single use articles shall be stored as specified under Subsection (i) of this section and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

— (iv) Items that are kept in closed packages may be stored less than 15 cm (6 inches) above the floor on dollies, pallets, racks, and skids that are designed as provided under Section 5-2(4)(u).

— (b) Prohibitions.

— (i) Except as specified in Subsection (ii) of this section, cleaned and sanitized equipment, utensils, laundered linens, and single service and single use articles may not be stored:

— (A) In locker rooms;

— (B) In toilet rooms;

— (C) In garbage rooms;

— (D) In mechanical rooms;

— (E) Under sewer lines that are not shielded to intercept potential drips;

— (F) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

— (G) Under open stairwells; or

— (H) Under other sources of contamination.

— (ii) Laundered linens and single service and single use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

— (4) Handling.

— (a) Kitchenware and Tableware.

— (i) Single service and single use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food and lip contact surfaces is prevented.

— (ii) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self service is provided.

— (iii) Except as specified under Subsection (ii) of this section, single service articles that are intended for food or lip contact shall be furnished for consumer self service with the original individual wrapper intact or from an approved dispenser.

— (b) Soiled and Clean Tableware.

— Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

— (c) Preset Tableware.

— Tableware may be preset if:

— (i) It is protected from contamination by being wrapped, covered, or inverted;

— (ii) Exposed and unused settings are removed when a consumer is seated; or

— (iii) Exposed and unused settings shall be cleaned and sanitized before further use if the settings are not removed when a consumer is seated.

R70-530-6. Water, Plumbing and Waste.

— 6.1. Water.

— (1) Source.

— (a) Approved System.*

— Drinking water shall be obtained from an approved source that is:

— (i) A "community water systems" which is a public drinking water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents; or

— (ii) A "non transient, non community water system" which is a public water system that is not a community water system and that regularly serves at least 25 of the same persons over a six months per year.

— (iii) A "non community water system" which is a public drinking water system that is not a community water system or a non transient, non community water system.

— (iv) A private water system that is constructed, maintained, and operated according to R309-101-113, Rules for Public Drinking Water Systems.

— (b) System Flushing and Disinfection.*

— A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

— (c) Bottled Drinking Water.*

— Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR 129-Processing and Bottling of Bottled Drinking Water.

— (2) Quality.

— (a) Standards.*

— Except as specified under Section (b) of this part:

— (i) Water from a public water system shall meet R309-101-113.

— (ii) Water from a private water system shall meet Utah's drinking water quality standards as set forth in R309.

—(b) Nondrinking Water.*
 —(i) The use of a nondrinking water supply shall be approved by the regulatory authority; and
 —(ii) Nondrinking water shall be used only for non-culinary purposes such as air conditioning, nonfood equipment cooling, fire protection, and irrigation.
 —(iii) A person shall not create a cross-connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.
 —(c) Sampling.
 —Water from a non-community water system, a non-transient, non-community water system, or a private water system, shall be sampled as required by R309-103 Drinking Water: Water Quality Maximum Contamination Levels (MCLs) and R309-104 Drinking Water: Monitoring, Reporting, and Public Notification and local drinking water quality regulations.
 —(d) Sample Report.
 —The most recent sample report of the non-community water system, non-transient, non-community water system or private water system shall be retained on file in the food establishment or the report shall be maintained as specified by the Utah Department of Agriculture and Food (UDAF).
 —(3) Quantity and Availability.
 —(a) Capacity.*
 —The water source and system shall be of sufficient capacity to meet the water demands of the food establishment.
 —(b) Pressure.
 —Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified under Subsections 6-1(2)(4)(b)(i) and (ii) to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.
 —(c) Hot Water.
 —(i) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment, and
 —(ii) Hot and cold water shall be provided through tempered mixing faucets at all handwashing lavatories, food preparation sinks, warewashing sinks, service sinks, or curbed cleaning facilities.
 —(4) Distribution, Delivery, and Retention.
 —(a) System.
 —Water shall be received from the source through the use of:
 —(i) An approved public water main; or
 —(ii) One or more of the following that shall be constructed, maintained, and operated according to law:
 —(A) Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances;
 —(B) Water transport vehicles; and
 —(C) Water containers.
 —(b) Alternative Water Supply.
 —Water from an approved source shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:
 —(i) A supply of containers of commercially bottled drinking water;
 —(ii) One or more closed portable water containers;
 —(iii) An enclosed vehicular water tank;
 —(iv) An on-premises water storage tank; or
 —(v) Piping, tubing, or hoses connected to an adjacent approved source.

—6-2. Plumbing System.
 —(1) Materials.
 —Approved.*
 —(i) A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to the International Plumbing Code as adopted by the State of Utah Building Codes Commission.
 —(ii) A water filter shall be made of safe materials.
 —(2) Design, Construction, and Installation.
 —(a) Approved System and Cleanable Fixtures.*
 —(i) A plumbing system shall be designed, constructed, installed, and operated according to the International Plumbing Code as adopted by the State of Utah Building Codes Commission.
 —(ii) A plumbing fixture such as a handwashing lavatory, toilet, or urinal shall be easily cleanable.
 —(b) Handwashing Lavatory, Water Temperature, and Flow.
 —(i) A handwashing lavatory shall be equipped to provide water at a temperature of at least 43 degrees C (110 degrees F) within 10 seconds, through a mixing valve or combination faucet.
 —(ii) A steam mixing valve may not be used at a handwashing lavatory.
 —(iii) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.
 —(c) Backflow Prevention, Air Gap.*
 —An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch).
 —(d) Backflow Prevention Device, Design Standard.
 —A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineers (ASSE) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.
 —(e) Conditioning Device, Design.
 —A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.
 —(3) Numbers and Capacity.
 —(a) Handwashing Lavatory.*
 —(i) Except as specified in Subsection (ii) and (iii) of this section, at least 1 handwashing lavatory, a number of handwashing lavatories necessary for their convenient use by employees in areas specified under Section 6-2(4)(a), and not fewer than the number of handwashing lavatories required by law shall be provided.
 —(ii) An adequate number of handwashing stations shall be provided for each temporary food establishment to include: a minimum of one handwashing station equipped with one enclosed container with a spigot, soap, paper towels, and a collection container for waste water.
 —(iii) If approved by the regulatory authority, when food exposure is limited and handwashing lavatories are not conveniently available, such as in some mobile or temporary food establishment or at some vending machine location, employees may use chemically treated towelettes for handwashing.
 —(b) Toilets and Urinals.*
 —At least 1 toilet and not fewer than the number of toilets required by law shall be provided. In accordance with law, urinals may be substituted for toilets if more than the required minimum number of toilets are provided.

— (e) Service Sink.

— At least 1 service sink or 1 curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

— (d) Backflow Prevention Device, When Required.*

— A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bib if a hose is attached or on a hose bib if a hose is not attached and backflow prevention is required by law, by:

— (e) Providing an air gap as required by the International Plumbing Code as adopted by the State of Utah Building Codes Commission; or

— (ii) Installing an approved backflow prevention device as required by the International Plumbing Code as adopted by the State of Utah Building Codes Commission.

— (iii) Water heater drains and clothes washers are exempt from the requirements of this section.

— (j) Backflow Prevention Device, Carbonator.*

— A double check valve shall be installed so that it is upstream from a carbonating device and downstream from any copper in the water supply line.

— (4) Location and Placement.

— (a) Handwashing Lavatory.*

— A handwashing lavatory shall be located:

— (i) In, or immediately adjacent to, toilet rooms and;

— (ii) To allow convenient use by employees in food processing, food dispensing, and warewashing areas. Convenient means:

— (A) In the food processing area where it shall be accessible to employees at all times; or,

— (B) In large food manufacturing areas or lines, handwashing lavatories shall be located in traffic areas, such as hallways leading into the processing area, and throughout the facility where food is handled.

— (b) Backflow Prevention Device, Location.

— A backflow prevention device shall be located so that it may be serviced and maintained.

— (c) Conditioning Device, Location.

— A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

— (5) Operation and Maintenance.

— (a) Using a Handwashing Lavatory.

— (i) A handwashing lavatory shall be maintained so that it is accessible at all times for employee use.

— (ii) A handwashing lavatory may not be used for purposes other than handwashing.

— (b) Prohibiting a Cross Connection.*

— (i) Except as allowed under 9 CFR 308.3(d) for firefighting, a person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.

— (ii) The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.

— (c) Scheduling Inspection and Service for a Water Treatment Device or Backflow Preventer.

— (i) Water treatment devices shall be scheduled for inspection and service, in accordance with manufacturer's recommendations and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.

— (ii) The premise owner or responsible person shall have the backflow prevention assembly tested by a certified backflow assembly tester at the time of installation, repair, or relocation and at least on an annual schedule or more often when required by the regulatory authority.

— (d) Water Reservoir of Fogging Devices, Cleaning.*

— (i) A reservoir that is used to supply water to a device such as a produce fogger shall be:

— (A) Maintained in accordance with manufacturer's specifications; and

— (B) Cleaned in accordance with manufacturer's specifications or according to the procedures specified under Subsection (ii) of this section, whichever is more stringent.

— (ii) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

— (A) Draining and complete disassembly of the water and aerosol contact parts;

— (B) Brush cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;

— (C) Flushing the complete system with water to remove the detergent solution and particulate accumulation; and

— (D) Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 ppm hypochlorite solution.

— (e) System Maintained in Good Repair.*

— A plumbing system shall be:

— (i) Repaired according to law; and

— (ii) Maintained in good repair.

— 6.3. Mobile Water Tank and Mobile Food Establishment Water Tank

— (1) Materials.

— Approved.

— Materials that are used in the construction of a mobile water tank, mobile food establishment water tank, and appurtenances shall be:

— (i) Safe;

— (ii) Durable, corrosion resistant, and nonabsorbent; and

— (iii) Finished to have a smooth, easily cleanable surface.

— (2) Design and Construction.

— (a) Enclosed System, Sloped to Drain.

— A mobile water tank shall be:

— (i) Enclosed from the filling inlet to the discharge outlet; and

— (ii) Sloped to an outlet that allows complete drainage of the tank.

— (b) Inspection and Cleaning Port, Protected and Secured.

— If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

— (i) Flanged upward at least 13 mm (1/2 inch); and

— (ii) Equipped with a port cover assembly that is:

— (A) Provided with a gasket and a device for securing the cover in place, and

— (B) Flanged to overlap the opening and sloped to drain.

— (c) "V" Type Threads, Use Limitation.

— A fitting with "v" type threads on a water tank inlet or outlet may be allowed only when a hose is permanently attached.

— (d) Tank Vent, Protected.

— If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

— (i) 16 mesh to 25.4 mm (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area; or

— (ii) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

- (e) Inlet and Outlet, Sloped to Drain.
- (i) A water tank and its inlet and outlet shall be sloped to drain.
- (ii) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.
- (f) Hose, Construction and Identification.
- A hose used for conveying drinking water from a water tank shall be:
 - (i) Safe;
 - (ii) Durable, corrosion resistant, and nonabsorbent;
 - (iii) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
 - (iv) Finished with a smooth interior surface; and
 - (v) Clearly and durably identified as to its use if not permanently attached.
- (3) Numbers and Capacity.
- (a) Filter, Compressed Air.
- A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system.
- (b) Protective Equipment or Device.
- A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective equipment or device shall be provided for a water inlet, outlet, and hose.
- (c) Mobile Food Establishment Tank Inlet.
- A mobile food establishment's water tank inlet shall be:
 - (i) 19.1 mm (3/4 inch) in inner diameter or less; and
 - (ii) Provided with a hose connection of a size or type that will prevent its use for any other service.
- (4) Operation and Maintenance.
- (a) System Flushing and Disinfection.*
- A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse.
- (b) Using a Pump and Hoses.
- (i) Unloading water or liquid food products shall be done through a hose port or in such a manner that the processing area is protected against contamination.
- (ii) A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.
- (c) Protecting Inlet, Outlet, and Hose Fitting.
- If not in use, a water tank and hose inlet and outlet fitting shall be protected.
- (d) Tank, Pump, and Hoses, Dedication.
- (i) A water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose, except as specified in Subsection (ii) of this section.
- (ii) Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized after each use.
- 6.4. Sewage, Other Liquid Waste, and Rainwater
- (1) Mobile Holding Tank
- (a) Capacity and Drainage.
- A waste water holding tank in a mobile food establishment shall be:
 - (i) Sized 15 percent larger in capacity than the water supply tank; and
 - (ii) Sloped to a drain that is 25 mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.
- (2) Retention, Drainage, and Delivery
- (a) Establishment Drainage System.

- Food establishment drainage systems, including grease traps, that convey sewage shall be sized and installed according to the International Plumbing Code as adopted by the State of Utah Building Codes Commission.
- (b) Backflow Prevention.*
- (i) A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed, except as specified in Subsection (v) of this section.
- (ii) If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 1.5 m (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.
- (iii) Equipment which is used for the storage or holding of food or drink, shall not have a drain in direct connection to a sewage line.
- (iv) Warewashing or culinary sinks in any food preparation room which is used for soaking, washing, or preparing food shall not have a drain in direct connection to a sewage line.
- (v) Three compartment sinks in dishwashing rooms, if not used for food preparation, may be directly connected to the sewer.
- (c) Grease Trap.
- If required, a grease trap shall be located to be easily accessible for cleaning.
- (d) Conveying Sewage.*
- Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.
- (e) Removing Mobile Food Establishment Wastes.
- Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.
- (f) Flushing a Waste Retention Tank.
- A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.
- (3) Disposal System.
- (a) Approved Sewage Disposal System.*
- Sewage shall be disposed through an approved facility that is:
 - (i) A public sewage treatment plant; or
 - (ii) An individual sewage disposal system that is sized, constructed, maintained, and operated according to law.
- (b) Other Liquid Wastes and Rainwater.
- Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to law.
- 6.5. Refuse, Recyclables, and Returnables.
- (1) Facilities on the Premises.
- (a) Indoor Storage Area.
- (i) If located within the food establishment, a storage area for refuse, recyclables, and returnables shall be non-absorbent, smooth and cleanable.
- (ii) Studs, joist, and rafters may not be exposed in areas subject to moisture.
- (b) Outdoor Storage Surface.
- An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.
- (c) Outdoor Enclosure.

— If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

— (d) Receptacles.

— (i) Equipment and receptacles for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect and rodent resistant, leakproof, and nonabsorbent, except as specified in Subsection (ii) of this section.

— (ii) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment or within closed outside receptacles.

— (e) Receptacles in Vending Machines.

— A refuse receptacle may not be located within a vending machine, except that a receptacle for beverage bottle crown closures may be located within a vending machine.

— (f) Outside Receptacles.

— (i) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight fitting lids, doors, or covers.

— (ii) Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the equipment is not installed flush with the base pad, under the unit.

— (g) Storage Areas, Rooms, and Receptacles, Capacity and Availability.

— (i) An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.

— (ii) A receptacle shall be provided in each area of the food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

— (iii) If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.

— (h) Toilet Room Receptacle, Covered.

— A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

— (i) Cleaning Equipment and Supplies.

— (i) Suitable cleaning equipment and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of equipment and receptacles for refuse, recyclables, and returnables, except as specified in Subsection (ii) of this section.

— (ii) If approved by the regulatory authority, off-premises based cleaning services may be used if on-premises cleaning equipment and supplies are not provided.

— (2) Location and Placement.

— Storage Areas, Redeeming Machines, Equipment, and Receptacles, Location.

— (i) An area designated for refuse, recyclables, returnables, and redeeming machines for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health nuisance is not created, except as specified in Subsection (ii) of this section.

— (ii) A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles are not subject to contamination from the machines and a public health nuisance is not created.

— (iii) The location of equipment and receptacles for refuse, recyclables, and returnables may not create a public health nuisance or interfere with the cleaning of adjacent space.

— (3) Operations and Maintenance.

— (a) Storing Refuse, Recyclables, and Returnables.

— Refuse, recyclables, and returnables shall be stored in equipment or refuse receptacles so that they are inaccessible to insects and rodents.

— (b) Areas, Enclosures, and Receptacles, Good Repair.

— Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

— (c) Outside Storage Prohibitions.

— (i) Refuse receptacles not meeting the requirements specified under Subsection 6-5(1)(d)(i) such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside, except as specified in Subsection (ii) of this section.

— (ii) Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

— (d) Covering Receptacles.

— Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:

— (i) Inside the food establishment if the equipment and receptacles:

— (A) Contain food residue and are not in continuous use; or

— (B) After they are filled; and

— (ii) With tight fitting lids or doors if kept outside the food establishment.

— (e) Using Drain Plugs.

— Drains in equipment and receptacles for refuse, recyclables, and returnables shall have drain plugs in place.

— (f) Maintaining.

— A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items and clean.

— (g) Cleaning Receptacles.

— (i) Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water shall be disposed of to an approved sewage disposal system.

— (ii) Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

— (4) Removal.

— (a) Frequency.

— Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

— (b) Receptacles or Vehicles.

— Refuse, recyclables, and returnables shall be removed from the premises by way of:

— (i) Portable receptacles that are constructed and maintained according to law; or

— (ii) A transport vehicle that is constructed, maintained, and operated according to law.

— (5) Facilities for Disposal and Recycling.

— Community or Individual Facility.

— Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility; or solid waste shall be disposed of in an individual refuse facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to law.

R70-530-7. Physical Facilities.

— 7.1. Materials for Construction and Repair.

— (1) Indoor Areas.

— Surface Characteristics.

— (i) Walls, Wall Coverings, and Ceilings.

— Except as specified in Subsection (D) of this section, materials for indoor walls, wall coverings, and ceiling surfaces under conditions of normal use shall be designed, constructed, and installed so that they are:

— (A) Smooth, light colored, durable, and easily cleanable for areas where food establishment operations are conducted.

— (B) Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

— (C) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

— (D) In a temporary food establishment:

— (I) If graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable materials approved by the regulatory authority that are effectively treated to control dust and mud; and

— (II) Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

— (ii) Floors.

— (A) Floors and floor coverings of all food preparation, food storage, and warewashing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, toilet rooms and vestibules, shall be constructed of smooth durable material such as sealed concrete, terrazzo, quarry tile, ceramic tile, durable grades of vinyl asbestos or plastic tile, or tight fitting wood impregnated with plastic, and shall be maintained in good repair. Nothing in this section shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.

— (B) Floors which are water flushed or which receive discharges of water or other fluid wastes or are in areas where pressure spray methods for cleaning are used, shall be provided with properly installed trapped drains. Such floors shall be constructed only of sealed concrete, terrazzo, quarry tile, ceramic tile, or similar materials and shall be graded to drain. The floor and wall junctures shall be coved and sealed.

— (C) In all establishments utilizing concrete, terrazzo, quarry tile, ceramic tile, or similar flooring materials, or where water flush cleaning methods are used, the junctures between walls and floors shall be coved and sealed. In all other cases, the juncture between walls and floors shall be coved so as not to present an open seam of more than 1/32 inch (1 mm).

— (iii) Floor Carpeting, Restrictions and Installation.

— (A) Carpeting may not be installed as a floor covering in food preparation areas, walk-in refrigerator, warewashing areas, food storage, and toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas subject to moisture.

— (B) Carpeting may be installed as a floor covering if it is:

— (I) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and

— (II) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means:

— (iv) Prohibited floor covering.

— Sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials shall not be used as floor coverings; however, these materials may be used in amounts necessary for immediate spot clean-up of spills or drippage on floors.

— (v) Mats and duckboards.

— Mats and duckboards shall be of nonabsorbent, grease resistant materials, and of such size, design, and construction to facilitate cleaning and shall be maintained clean and in good repair.

— (2) Outdoor Areas.

— Surface Characteristics.

— (i) The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

— (ii) Exterior surfaces of buildings and mobile food establishments shall be of weather resistant materials and shall comply with law.

— 7.2. Design, Construction, and Installation.

— (1) Cleanability.

— (a) Floors, Walls, and Ceilings, Utility Lines.

— (i) Utility service lines and pipes may not be unnecessarily exposed.

— (ii) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

— (iii) Exposed horizontal utility service lines and pipes may not be installed on the floor.

— (b) Walls and Ceilings, Attachments.

— (i) Except as specified in Subsection (ii) of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.

— (ii) In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

— (c) Walls and Ceilings, Studs, Joists, and Rafters.

— Studs, joists, and rafters may not be exposed in areas subject to moisture. This requirement does not apply to temporary food establishments.

— (2) Functionality.

— (a) Light Bulbs, Protective Shielding.

— (i) Except as specified in Subsection (ii) of this section, light bulbs shall be shielded, coated, or otherwise shatter resistant in areas where there is exposed food; clean equipment, utensils, and linens; or unwrapped single service and single use articles.

— (ii) Shielded, coated, or otherwise shatter resistant bulbs need not be used in areas used only for storing food in unopened packages, if:

— (A) The integrity of the packages can not be affected by broken glass falling onto them; and

— (B) The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

— (iii) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

— (b) Heating, Ventilation, Air Conditioning System Vents.

— Heating, ventilation, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food preparation surfaces, equipment, or utensils.

— (e) Insect Control Devices, Design and Installation.

— (i) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

— (ii) Insect control devices shall be installed so that:

— (A) The devices are not located over a food preparation area, and

— (B) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food, clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

— (d) Toilet Rooms, Enclosed.

— (i) A toilet room located on the premises shall be completely enclosed and provided with a tight fitting and self-closing door. This requirement does not apply to a toilet room that is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall.

— (ii) Toilet rooms shall not open directly into a processing area. The requirements of this section can be met in the following manner:

— (A) Placing two (2) self-closing doors between the processing area and the toilet room; or

— (B) Having the toilet room open into another area, such as a hallway or storage area, with a distance of at least 15 feet between the door of the toilet room and the processing area.

— (e) Outer Openings, Protected.

— (i) Except in temporary food establishments, openings to a portion of a building that is not part of the food establishment or to the outdoors shall be protected against the entry of insects and rodents by:

— (A) Filling or closing holes and other gaps along floors, walls, and ceilings;

— (B) Closed, tight-fitting windows, and

— (C) Solid self-closing, tight-fitting doors; or

— (ii) Subsection (i) of this section does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

— (iii) Except as specified in Subsections (ii) and (iv) of this section, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and solid doors, as specified under Subsection (i) of this section, the openings shall be protected against the entry of insects and rodents by:

— (A) 16 mesh to 25.4 mm (16 mesh to 1 inch) screens;

— (B) Properly designed and installed air curtains; or

— (C) Other effective means.

— (iv) Subsection (iii) of this section does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

— (f) Exterior Walls and Roofs, Protective Barrier.

— Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

— (g) Outdoor Food Vending Areas, Overhead Protection.

— If located outside, a machine used to vend food shall be provided with overhead protection except that machines vending canned beverages need not meet this requirement.

— (h) Outdoor Servicing Areas, Overhead Protection.

— Servicing areas shall be provided with overhead protection except that areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.

— (i) Outdoor Walking and Driving Surfaces, Graded to Drain.

— Exterior walking and driving surfaces shall be graded to drain.

— (j) Outdoor Refuse Areas, Curbed and Graded to Drain.

— Outdoor refuse areas shall be constructed in accordance with law and shall be curbed and graded to drain to collect and dispose of liquid waste that results from the refuse and from cleaning the area and waste receptacles.

— (k) Living areas.

— (i) No operation of a food establishment shall be conducted in any room used as living or sleeping quarters.

— (ii) An establishment handling only packaged food products may be connected to living or sleeping quarters as long as they are separated by complete partitioning and solid, self-closing doors.

— (iii) No establishment processing, preparing, packaging, or manufacturing food products shall have access to living or sleeping quarters through a door, window or other entrance.

— 7.3. Numbers and Capacities.

— (1) Handwashing Provisions.

— (a) Handwashing Cleanser Availability.

— Each handwashing lavatory or group of 2 adjacent lavatories shall have available a supply of hand cleaning liquid, powder, or bar soap.

— (b) Hand Drying Provision.

— Each handwashing lavatory or group of adjacent lavatories shall be provided with:

— (i) Individual, disposable towels;

— (ii) A continuous towel system that supplies the user with a clean towel; or

— (iii) A heated air hand drying device.

— (c) Handwashing Aids and Devices, Use Restrictions.

— A sink used for food preparation or utensil washing, or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing lavatory.

— (d) Disposable Towels, Waste Receptacle.

— A handwashing lavatory or group of adjacent lavatories that is provided with disposable towels shall be provided with a waste receptacle.

— (e) Minimum Number.

— Handwashing lavatories shall be conveniently located and provided as specified under 6-2(3)(a).

— (2) Toilet Provisions.

— (a) Minimum Number.

— Toilets and urinals shall be provided as specified under 6-2(3)(b).

— (b) Toilet Tissue, Availability.

— A supply of toilet tissue shall be available at each toilet.

— (3) Lighting.

— Intensity.

— The light intensity shall be:

— (i) At least 110 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry food storage areas; and in other areas and rooms during periods of cleaning;

— (ii) At least 220 lux (20 foot candles):

— (A) At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged food are sold or offered for consumption;

— (B) Inside equipment such as reach-in and under-counter refrigerators;

—(C) At a distance of 75 cm (30 inches) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage; and in toilet rooms; and

—(iii) At least 540 lux (50 foot candles) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

—(4) Ventilation:

—Mechanical:

—If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided. Ventilation systems shall comply with the 1994 Uniform Mechanical Code Part II—Commercial Kitchens, Sections 507 and 508.

—(5) Dressing Areas and Lockers:

—Designation:

—(i) Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.

—(ii) Lockers or other suitable facilities shall be provided for the clean and orderly storage of employees' clothing and other possessions.

—(6) Service Sinks

—A service or curbed cleaning facility shall be provided.

—7.4. Location and Placement

—(1) Toilet Rooms:

—Convenience and Accessibility:

—Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

—(2) Employee Accommodations:

—Designated Areas:

—(i) Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.

—(ii) Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles can not occur.

—(3) Distressed Merchandise:

—Segregation and Location:

—Products that are held by the owner or manager for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

—(4) Refuse, Recyclables, and Returnables:

—Units, receptacles, and areas designated for storage of refuse and recyclables and returnable containers shall be located as specified under Section 6-5(2):

—7.5. Operation and Maintenance:

—Premises, Structures, Attachments, and Fixtures Methods

—(a) Repairing:

—The physical facilities shall be maintained in good repair.

—(b) Cleaning, Frequency and Restrictions:

—(i) The physical facilities shall be cleaned as often as necessary to maintain cleanliness:

—(ii) Cleaning shall be done during periods when the least amount of food is exposed such as after closing. This requirement does not apply to cleaning that is necessary due to a spill or other accident.

—(c) Cleaning Floors, Dustless Methods:

—(i) Except as specified in Subsection (ii) of this section, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

—(ii) Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:

—(A) Without the use of dust-arresting compounds; and

—(B) In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning:

—(d) Cleaning Ventilation Systems, Nuisance and Discharge Prohibition:

—(i) Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials:

—(ii) If vented to the outside, ventilation systems may not create a public health nuisance or unlawful discharge:

—(e) Cleaning Maintenance Tools, Preventing Contamination.*

—Food preparation sinks, handwashing lavatories, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes:

—(f) Drying Mops:

—After use, mops shall be placed in a position that allows them to air dry without soiling walls, equipment, or supplies:

—(g) Maintaining and Using Handwashing Lavatories:

—Handwashing lavatories shall be kept clean, and maintained and used as specified under Section 6-2(5)(a):

—(h) Closing Toilet Room Doors:

—Toilet room doors shall be kept closed except during cleaning and maintenance operations:

—(i) Using Dressing Rooms and Lockers:

—(i) Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment.

—(ii) Lockers or other suitable facilities shall be used for the clean and orderly storage of employee clothing and other possessions.

—(j) Controlling Pests.*

—(i) The presence of insects, rodents, and other pests shall be controlled to minimize their presence on the premises by:

—(A) Routinely inspecting incoming shipments of food and supplies;

—(B) Routinely inspecting the premises for evidence of pests;

—(C) Using methods, if pests are found, such as trapping devices or extermination by approved methods; and

—(D) Eliminating harborage conditions:

—(i) Removing Dead or Trapped Birds, Insects, Rodents, and Other Pests:

—Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests:

—(j) Storing Maintenance Equipment:

—Maintenance tools such as brooms, mops, vacuum cleaners, and similar equipment shall be:

—(i) Stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and

—(ii) Stored in an orderly manner that facilitates cleaning of the maintenance equipment storage location:

—(k) Maintaining Premises, Unnecessary Items and Litter:

—The premises shall be free of:

—(i) Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and

—(ii) Litter:

—(l) Prohibiting Animals.*

— (i) Live animals may not be allowed on the premises of a food establishment, except as specified in Subsections (ii) and (iii) of this section.

— (ii) Live animals may be allowed in the following situations if the contamination of food, clean equipment, utensils, and linens, and unwrapped single service and single use articles can not result:

— (A) Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

— (B) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

— (C) In areas that are not used for food preparation such as dining and sales areas, support animals such as guide dogs that are trained to assist an employee or other person who is handicapped, are controlled by the handicapped employee or person, and are not allowed to be on seats or tables; and

— (D) Pets in the common dining areas of group residences at times other than during meals if:

— (I) Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;

— (II) Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present, and

— (III) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service.

— (iii) Live or dead fish bait shall be stored so that contamination of food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles can not result.

R70-530-8. Poisonous or Toxic Materials.

— 8.1. Labeling and Identification.

— (1) Original Containers.

— Identifying Information, Prominence.*

— Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.

— (2) Working Containers.

— Common Name.*

— Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.

— 8.2. Labeling and Identification.

— (1) Storage.

— Separation.*

— Poisonous or toxic materials shall be stored so they may not contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

— (i) Separating the poisonous or toxic materials by spacing or partitioning; and

— (ii) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. This Subsection does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

— (2) Presence and Use.

— (a) Restriction.*

— (i) Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the

cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment.

— (ii) Subsection (i) of this section does not apply to packaged poisonous or toxic materials that are for retail sale.

— (b) Conditions of Use.*

— Poisonous or toxic materials shall be:

— (i) Used according to:

— (A) Law and this rule;

— (B) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment;

— (C) The conditions of certification, if certification is required, for use of the pest control materials; and

— (D) Additional conditions that may be established by the regulatory authority; and

— (ii) Applied so that:

— (A) A hazard to employees or other persons is not constituted; and

— (B) Contamination including toxic residues due to drip, drain, fog, splash, or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted-use pesticide, this is achieved by:

— (I) Removing the items;

— (II) Covering the items with impermeable covers; or

— (III) Taking other appropriate preventive actions; and

— (IV) Cleaning and sanitizing equipment and utensils after the application.

— (iii) Restricted and non-restricted use pesticides for commercial purposes shall be applied by a licensed commercial pesticide applicator.

— (iv) A license is required for private and non-commercial pesticide applicators only if they use restricted-use pesticides.

— (3) Container Prohibitions.

— Poisonous or Toxic Material Containers.*

— A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.

— (4) Chemicals.

— (a) Sanitizers, Criteria.*

— Chemical sanitizers and other chemical antimicrobials applied to food contact surfaces shall meet the requirements specified in 21 CFR 178.1010 Sanitizing solutions.

— (b) Chemicals for Washing Fruits and Vegetables, Criteria.*

— Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315 Chemicals used in washing or to assist in the lye peeling of fruits and vegetables.

— (c) Boiler Water Additives, Criteria.*

— Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310 Boiler water additives.

— (d) Drying Agents, Criteria.*

— Drying agents used in conjunction with sanitization shall:

— (i) Contain only components that are listed as one of the following:

— (A) Generally recognized as safe for use in food as specified in 21 CFR 182 Substances Generally Recognized As Safe, or 21 CFR 184 Direct Food Substances Affirmed As Generally Recognized as Safe;

— (B) Generally recognized as safe for the intended use as specified in 21 CFR 186 Indirect Food Substances Affirmed as Generally Recognized As Safe;

— (C) Approved for use as a drying agent under a prior sanction specified in 21 CFR 181 Prior-Sanctioned Food Ingredients;

—(D) Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Sections 175.178;

—(E) Approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39 Threshold of regulation for substances used in food contact articles; and

—(ii) When sanitization is with chemicals, the approval required in Subsection (i)(C) or (i)(E) of this section or the regulation as an indirect food additive required in Subsection (i)(D) of this section, shall be specified for use with chemical sanitizing solutions.

—(e) Incidental Food Contact, Criteria.*

—Lubricants shall meet the requirements specified in 21 CFR 178.3570 Lubricants with incidental food contact, if they are used on food contact surfaces, on bearings and gears located on or within food contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food contact surfaces:

—(f) Restricted Use Pesticides, Criteria.*

—Restricted use pesticides specified under § 2(2)(b) shall meet the requirements specified in 40 CFR 152.1 Classification of Pesticides.

—(g) Rodent Bait Stations.

—Rodent bait shall be contained in a covered, tamper-resistant bait station and shall not be used in food processing areas.

—(h) Tracking Powders, Pest Control and Monitoring.*

—(i) A tracking powder pesticide may not be used in a food establishment.

—(ii) If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-serve, and single-use articles.

—(i) Restriction and Storage.*

—(i) Only those medicines that are necessary for the health of employees shall be allowed in a food establishment. This Section does not apply to medicines that are stored or displayed for retail sale.

—(ii) Medicines that are in a food establishment for the employees' use shall be labeled as specified under Section 8 1(1) and located to prevent the contamination of food, equipment, utensils, linens, and single-serve and single-use articles.

—(j) Refrigerated Medicines, Storage.*

—Medicines belonging to employees that require refrigeration and are stored in a food refrigerator shall be:

—(i) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of employees' medicines; and

—(ii) Located on the lowest shelf.

—(k) Storage.*

—First aid supplies that are in a food establishment for the employees' use shall be:

—(i) Labeled as specified under Section 8 1(1); and

—(ii) Stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, and linens, and single-serve and single-use articles.

—(l) Storage.

—Except as specified under 8 2(4)(i) and 8 2(4)(k), employees shall store their other personal care items as specified under Subsection 7-3(5)(ii).

—8 3. Stock and Retail Sale.

—Separation.*

—Poisonous or toxic materials shall be stored and displayed for retail sale so they may not contaminate food, equipment, utensils, linens, and single-serve and single-use articles by:

—(i) Separating the poisonous or toxic materials by spacing or partitioning; and

—(ii) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-serve or single-use articles.

R70-530-9. Special Requirements.

—9 1. General.

—In addition to all other applicable requirements of this rule, the following requirements shall pertain to the specific processors referenced in this chapter.

—9 2. Rabbit Processors.

—Special Processing Requirements.

—(a) Separate Rooms.

—The killing and skinning area shall be separated by a self-closing door from the packaging and processing rooms.

—(b) Pelts.

—Pelts shall not be stored in the slaughtering or packaging rooms, or in rooms used for storing equipment or supplies.

—(c) Hutches and Rearing Pens.

—(i) If hutches or rearing pens are located on the same premises as the slaughtering and processing building, they must be so made and maintained as to constitute a suitable operation free of fly breeding and manure storing areas that may constitute a nuisance or health hazard.

—(ii) Hutches and rearing pens shall not be located in the same building as the slaughtering and packaging rooms, or other food establishment operations.

—9 3. Canneries.

—(1) Low Acid Foods.

—All low acid canning regulations adopted under authority of the Federal Food, Drug and Cosmetic Act are the low acid canning rules in this state. This specifically refers to the Code of Federal Regulations (CFR), 21 CFR 113 and 108 B and 108.35, and generally refers to any other cross-referenced or otherwise pertinent regulations in the CFR. Where state rules conflict or are more stringent than the federal requirements, the state rules shall have precedence.

—(2) Acidified Foods.

—All acidified foods regulations adopted under authority of the Federal Food, Drug and Cosmetic Act are the acidified food rules of this state. This specifically refers to 21 CFR 114 and 108 B, and 108.25, and generally refers to any other cross-referenced or otherwise pertinent regulations in the Code of Federal Regulations. Where state rules conflict or are more stringent than the federal requirements, the state rules shall have precedence.

—(3) Other canned or thermally processed foods.

—All other foods not covered under (1) or (2) of this Section which are to be packaged into hermetically sealed containers shall be mechanically capped or sealed. However, this does not pertain to home canned foods which are for the owners and his family's personal use.

—9 4. Bottling Plants.

—Bottled Water.

—(a) Source Development.

—Bottled water sources, such as springs or wells, shall be developed so they are in compliance with R309 200 211.

—(b) Bottled Water Standards and Plant Sanitation.

—Bottled water shall meet the standards for quality, sanitation and plant construction, as outlined in 21 CFR 129 and 165. Where state rules are more stringent than the federal requirements, the state rules shall have precedence.

—(c) Capping.

—All bottled water operations shall use mechanical capping or closure devices.

— (d) Caustics:
 — All bottling plants using caustics for the cleaning of multi use containers shall use the caustics in conformance with the manufacturers' requirements, or according to the table listed below, and shall have available and use a caustic test kit to determine caustic strength.

TABLE 6

Combinations of Causticity, Time and Temperature of Equal Bactericidal Value, for Soaker Tank of Soaker-Type Bottle Washers

Temperature, degrees	Concentration of NaOH, percent						
F	170	160	150	140	130	120	110
C	77	71	66	60	54	49	43
Time In Minutes	Concentration of NaOH, percent						
3	0.57	0.86	1.28	1.91	2.86	4.27	6.39
5	0.43	0.64	0.96	1.43	2.15	3.22	4.80
7	0.36	0.53	0.80	1.19	1.78	2.66	3.98

— 9.4. Ice Plants:
 — Special Requirements:
 — Ice plants using water for the manufacturing of ice must obtain their water from an approved source. If the water is obtained from a community water system as defined in Section 6-1(1)(a)(i) of this rule, no additional testing is necessary. If the water is obtained from other than a community water system, it must meet R309 101-113 standards for a non-community water system. This would include an initial test for inorganic chemicals, turbidity and microbiological standards. After the initial test, it would require testing for:

- (a) Microbiological standards once in each quarter of the calendar year in which the plant operates January-March, April-June, July-September, October-December.
- (b) Turbidity, sulfate and nitrate once each three years.

— 9.5. Produce Stands:
 — Special Requirements:
 — Produce stands shall be exempt from these requirements as long as they meet the following requirements:
 — (a) They operate on a seasonal basis.
 — (b) They do not cut, process, prepare or package produce products for sale.
 — (c) They handle only raw, unprocessed fruits and vegetables.
 — (d) They have access to toilet and handwashing facilities.
 — (e) All food products are stored at least 6 inches off the ground.
 — (f) The surroundings are maintained clean and free of litter and garbage.

— 9.7. Game Processors:
 — Special Requirements:
 — Retail meat establishments processing game shall meet the following requirements:
 — (a) Separate coolers shall be provided for game animals, and unpackaged, inspected meat products.
 — (b) Game animals shall not be processed at the same time as inspected meat, or other food products.
 — (c) After the completion of processing game animals, all equipment and utensils must be completely cleaned and sanitized prior to processing any inspected meat products or other food products.

— 9.8. Mobile Food Vendors:
 — Requirements:
 — Vendors who sell or offer for sale potentially hazardous food, such as meat, directly to the consumer out of a truck or other mobile vehicle shall:

- (a) Be registered annually with/or under inspection by the UDAF.
- (b) Supply UDAF with the following information:
 - (i) The name, mailing address, telephone number, driver's license of the owner or agent of the business.
 - (ii) Information specifying whether the business is owned by an association, corporation, individual, partnership, or other legal entity;
 - (iii) A statement signed by the owner or responsible party that:
 - (A) Attests to the accuracy of the information provided, and
 - (B) Affirms that the applicant will:
 - (I) Comply with this rule, and
 - (II) Allow the regulatory authority to inspect the vehicle.
 - (iv) Identify the source of the food products.
 - (v) Other information as required by the regulatory authority.
- (c) The food product shall:
 - (i) Be stored and maintained at the temperature required in Chapter 4.
 - (ii) Be protected from contamination by keeping the equipment clean and the food product covered.
- (d) The vehicle shall be kept clean.

— 9.9. Distressed and Salvaged Food:
 — (1) Definitions:
 — For the purpose of this Section:
 — (a) "Distressed merchandise" shall mean any food which has no label or which has been subjected to possible damage due to accident, fire, flood, adverse weather, or to any other similar cause, and which may have been rendered unsafe or unsuitable for human or animal consumption or use. "Distressed merchandise" shall not include food products that fail to meet manufacturer's or packer's specifications, but which do meet applicable federal and state regulations.
 — (b) "Non-salvageable merchandise" means "distressed merchandise," as defined in Subsection (a) of this section, which cannot be safely or practicably reconditioned.
 — (c) "Perishable" means that there exists a significant risk of spoilage or deterioration when a food has not been properly stored or handled.
 — (d) "Reconditioning" means any appropriate process or procedure by which distressed merchandise or salvageable merchandise can be brought into compliance with all the requirements of the Utah Wholesome Food Act, Title 4, Chapter 5 and R70 530, making it suitable for consumption or use as human or animal food.
 — (e) "Salvageable merchandise" includes:
 — (i) Food products that fail to meet manufacturer's or packer's specifications, but which do meet applicable federal and state regulations.
 — (ii) Foods sent to a salvage food establishment which are safe and wholesome and may need reconditioning.
 — (iii) Distressed merchandise, as defined in Subsection (a) of this section, which can be reconditioned to the satisfaction of the UDAF.
 — (iv) Food that has been donated to a charitable food organization under the Utah Charitable Food Act, Title 4, Chapter 34.
 — (f) "Salvage processing facility" means a food establishment engaged in the business of reconditioning or by other means salvaging distressed or salvageable merchandise for human or animal consumption or use.
 — (g) "Salvage dealer" means any person who is engaged in selling or distributing salvaged merchandise.
 — (h) "Salvage Supplier" means any person who transfers distressed merchandise to a salvage processor or dealer.
 — (2) Notification of the Utah Department of Agriculture and Food — Emergency Occurrences.

—(i) The person in charge of a food establishment that is affected by a fire, flood, extended power outage, or a similar significant occurrence that creates a reasonable probability that food in the food establishment may have been contaminated or that the temperature level of food which is in a potentially hazardous form may have caused that food to become hazardous to health, shall take such action as is necessary to protect the public health and shall promptly notify the regulatory authority of the emergency.

—(ii) If emergency removal of distressed merchandise is required, notice to the UDAF shall be made as soon thereafter as possible. No interstate movement of known distressed merchandise shall be made without prior approval of the UDAF and the responsible USDA, FDA, or State agency, in the State to receive the merchandise.

—(iii) It shall be the duty of the salvage distributor or manager of the salvage processing facility to make contact with the UDAF within forty-eight (48) hours whenever distressed merchandise subject to the provisions of this rule is obtained.

—(3) Protection of Distressed and Salvaged Merchandise.

—(a) Contamination Protection.

Distressed merchandise shall be moved from the site of a fire, flood, sewer backup, wreck or other cause as expeditiously as possible after compliance with Section (2) so as not to become putrid, rodent or insect harborages, or otherwise a menace to public health. All distressed and salvageable merchandise of a perishable nature shall, prior to the reconditioning, be transported only in vehicles provided with sufficient refrigeration or freezing capabilities, if necessary, for product maintenance.

—(b) Segregation of Merchandise.

All salvageable merchandise shall be promptly sorted and segregated from non-salvageable merchandise to prevent further contamination of the merchandise to be reconditioned for sale or distribution.

—(c) Handling of Non-Salvageable Merchandise.

Foods contaminated and/or adulterated by pesticides or other chemicals; potentially hazardous foods (frozen or those requiring refrigeration) which have been exposed to a temperature above 7 degrees C (45 degrees F) for a period exceeding 4 hours; foods found unfit for salvage on examination; and foods packaged in paper or other porous materials which have been subject to contamination, shall be deemed to be non-salvageable merchandise, as defined in Section (1)(b).

—(d) Cross-Contamination Protection.

Sufficient precautions shall be taken to prevent cross-contamination among the various types of merchandise which are salvageable or salvaged; such as between animal feed and human food, or chemicals and food.

—(e) Shipment Containers.

—(i) Boxes or other containers used to ship or distribute salvaged or distressed foods shall be kept clean and in good condition.

—(ii) If the boxes or containers are contaminated with chemicals, rodent droppings or urine, they shall be discarded.

—(4) Reconditioning.

—(a) Reconditioning of food.

The reconditioning of food and food related items shall be done:

—(i) In a room or processing area that complies with the construction requirements for a food establishment as set forth in R70-530.

—(ii) In a manner that prevents contamination of the food after it has been reconditioned.

—(b) Safe.

—Foods or food-related items, after they have been reconditioned, shall be wholesome and safe for human consumption and shall be handled in a manner that complies with the applicable provisions of R70-530.

—(e) Condition of Containers.

All metal cans of food offered for sale or distribution shall be essentially free from rust, pitting and dents especially at rim, end double seams and/or side seams. Leakers, springers, flippers, and swells shall be deemed unfit for sale or distribution. Containers, including metal and glass containers with press caps, screw caps, pull rings or other types of openings, which have been in contact with water, liquid foam, or other deleterious substances, as a result of fire fighting efforts, flood, sewer backups or similar mishaps, shall be deemed adulterated and unfit for sale or distribution.

—(d) Sanitizing of Containers.

All metal containers of food, other than those mentioned in (e) of this section, whose integrity has not been compromised and whose integrity would not be compromised by reconditioning, and which have been partially or totally submerged in water, liquid foam, or other deleterious substance as the result of flood, sewer backup or other reasons shall, after thorough cleaning, be subjected to sanitizing rinse of a concentration of 100 ppm available chlorine for a minimum period of one minute, or shall be sanitized by another method approved by the UDAF.

—(e) Pinholes.

Cans showing surface rust shall, after having their labels removed, be inspected and destroyed if they contain pinholes.

—(f) Condition of Food Packages.

Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

—(5) Public Notification.

—Sign.

A sign shall be prominently placed by the door of the salvage food establishment that notifies the consumer that this establishment sells distressed or salvaged food. For example, "This store sells Salvaged or Reconditioned Food Items". The lettering of the sign shall be at least 1/4 inch in height as measured by the lower case letter "o".

—(6) Labeling.

—(a) Labels.

All salvaged merchandise containers shall be properly labeled in accordance with the requirements of the Fair Packaging and Labeling Act in the Federal Food, Drug, and Cosmetic Act.

—(b) Overlabeling.

When original labels are missing or illegible, relabeling or overlabeling is required.

—(c) No Labels.

Any container of food with the label or mandatory information missing, that cannot be identified and relabeled correctly, shall not be sold.

—(d) Sell by or Use by Dates.

Distressed or salvaged food that contains a use by or sell by date indicated on the container shall not be sold or offered for sale:

—(i) After the date indicated on the label if the date is placed on the label for public health reasons, or

—(ii) For more than six (6) months after the use by or sell by date if the date relates to a quality issue or the conditions of storage have been changed, for example the product has been frozen; or except as specified in (iii).

— (iii) The salvage food establishment has written verification from the original manufacturer that the product is still wholesome and safe for human consumption after six (6) months under the current conditions of sale. The written verification shall include the shelf life of the product under the current conditions of sale or length of time the product may be sold after the indicated date.

— (7) Records.

— (a) Record Information.

Records or receipts of distressed, salvageable, and salvaged merchandise shall be kept by the salvage facility; the regulatory authority shall be allowed to inspect these records during business hours. These records shall include: the product name; the source of the distressed or salvaged merchandise; the date received; the type of damage, if any; and any other unusual circumstances.

— (b) Keeping of Records.

These records shall be kept on the premises for a period of two years following the completion of transactions involving any lot of merchandise.

— (8) Salvage Processing Facilities and Distributors Outside the Jurisdiction of the UDAF.

— (a) Salvage Food Establishments Outside of Utah.

Salvaged merchandise from salvage processing facilities and distributors located outside the jurisdiction of the State of Utah, may be sold or distributed within the State, if such facilities and distributors conform to the provisions of this rule or substantially equivalent provisions.

— (b) Proof of Compliance.

To determine the extent of compliance with such provisions, the UDAF may accept reports from responsible authorities in other jurisdictions where such facilities and distributors' operations are located.

R70-530-10. Compliance and Enforcement.

— 10.1. Rule Applicability.

— (1) Public Health Protection.

— Use for Intended Purpose.

— (i) The regulatory authority shall apply this rule to promote its underlying purpose of safeguarding public health and assuring that food is safe, unadulterated, and honestly presented when offered to the consumer.

— (ii) In enforcing the provisions of this rule, the regulatory authority shall assess existing facilities or equipment that were in use before the effective date of this rule based on the following considerations:

— (A) Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;

— (B) Whether food contact surfaces comply with Section 5-1(1);

— (C) Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with Section 5-3(1)(a); and

— (D) The existence of a documented agreement of the owner that the facilities or equipment will be replaced as specified under Subsection 10-3(3)(e)(vi) or upgraded or replaced as specified under Subsection 10-3(3)(e)(vii).

— (2) Additional Requirements.

— Preventing Health Hazards, Provision for Conditions Not Addressed.

— (i) If necessary to protect against public health hazards, the regulatory authority may impose specific requirements in addition to the requirements contained in this rule that are authorized by law.

— (ii) The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the

underlying public health rationale. The documentation shall be provided to the owner, or person in charge and a copy shall be maintained in the regulatory authority's file for the food establishment.

— (3) Variances.

— (a) Modifications and Waivers.

The regulatory authority may grant a variance by modifying or waiving the requirements of this rule if in the opinion of the regulatory authority a health hazard will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under Section 10-1(3)(b) in its records for the food establishment.

— (b) Documentation of Proposed Variance and Justification.

Before a variance from a requirement of this rule is approved by the regulatory authority, the information that shall be provided by the person requesting the variance and retained in the regulatory authority's file on the food establishment includes:

— (i) A statement of the proposed variance of the rule requirement citing relevant rule section numbers;

— (ii) An analysis of the rationale how the potential public health hazards addressed by the relevant rule sections will be alternatively addressed by the proposal; and

— (iii) A HACCP plan if required as specified under Section 10-2(c)(i) that includes the information specified under Section 10-2(d) as it is relevant to the variance requested.

— (c) Conformance with Approved Procedures.*

If the regulatory authority grants a variance as specified under Section 10-1(3)(a), or a HACCP plan is otherwise required as specified under Section 10-2(c)(i), the owner shall:

— (i) Comply with the HACCP plans and procedures that are submitted and approved as specified under Section 10-2(d) as a basis for the modification or waiver; and

— (ii) Maintain and provide to the regulatory authority, upon request, records specified under Subsection 10-2(iv) and (v) that demonstrate that the following are routinely employed:

— (A) Procedures for monitoring critical control points;

— (B) Monitoring of the critical control points;

— (C) Verification of the effectiveness of an operation or process; and

— (D) Necessary corrective actions if there is failure at a critical control point.

— 10.2. Plans Submission and Approval.

— (1) Facility and Operating Plans

— (a) When Plans Are Required.

An owner shall submit to the regulatory authority properly prepared plans and specifications for review and approval before:

— (i) The construction of a food establishment;

— (ii) The conversion of an existing structure for use as a food establishment; or

— (iii) The remodeling of a food establishment or a change in the type of food operation if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this rule.

— (b) Contents of the Plans and Specifications.

The plans and specifications for a food establishment, including a food establishment specified under Section 10-2(e)(i), shall include, as required by the regulatory authority based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with rule provisions:

— (i) Intended food to be packaged, processed, prepared, stored, or sold;

— (ii) Anticipated volume of food to be prepared, stored, or sold;

— (iii) Proposed layout, mechanical schematics, construction materials, and finish schedules;

~~—(iv) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;~~

~~—(v) Written standard operating procedures that reflect the knowledge specified under Section 3-2(a) and implement the requirements of this rule, including indication of how practices ensure that:~~

~~—(A) The transmission of foodborne disease is prevented by managing job applicants and food employees as specified under Section 3-2;~~

~~—(B) Food is received from approved sources as specified under Section 4-2(1)(a);~~

~~—(C) Food is managed so that the safety and integrity of the food from the time of delivery to the establishment throughout its storage, preparation, and transportation to the point of sale or service to the consumer is protected;~~

~~—(D) Potentially hazardous food is maintained, including freezing, cold holding, cooking, hot holding, cooling, reheating, and serving in conformance with the temperature and time requirements specified under Sections 4-4 and 4-5;~~

~~—(E) Warewashing is effective, including assurance that the chemical solutions and exposure times necessary for cleaning and sanitizing utensils and food-contact surfaces of equipment are provided as specified under Sections 5-6 and 5-7, and~~

~~—(F) Records that are specified under Sections 6-2(5)(e), 4-2(3)(a) and (b) are retained for inspection;~~

~~—(vi) Proposed program of training for the persons in charge and food employees pertaining to protecting public health and the safety and integrity of food; and~~

~~—(vii) Other information that may be required by the regulatory authority for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.~~

~~—(e) When a HACCP Plan Is Required.~~

~~—(i) Before engaging in an activity that requires a HACCP plan, a person in charge or an owner shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under Section 10-2(1)(d) and the relevant provisions of this rule if:~~

~~—(A) Submission of a HACCP plan is required according to law;~~

~~—(B) A variance is required as specified under Section 4-5(2)(a), Subsection 5-2(4)(j), or Subsections 4-4(1)(a)(iii)(B), or 4-4(4-2(3)(b)(ii)(B); or~~

~~—(C) The regulatory authority determines that a food preparation or processing method requires a variance based on a plan submittal specified under Section 10-2(1)(b), an inspectional finding, or a variance request.~~

~~—(ii) The owner or responsible party shall have a properly prepared HACCP plan as specified under Section 4-5(2)(b).~~

~~—(d) Contents of a HACCP Plan.~~

~~For a food establishment that is required under Section 10-2(1)(e) to have a HACCP plan, the plan and specifications shall indicate:~~

~~—(i) A categorization of the types of potentially hazardous foods that will be manufactured or processed, such as soups and sauces; salads; bulk solid foods, such as meat roasts; or of other foods that are specified by the regulatory authority;~~

~~—(ii) A flow diagram by specific food or category type identifying critical control points and providing information on the following:~~

~~—(A) Ingredients, materials, and equipment used in the preparation of that food, and~~

~~—(B) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;~~

~~—(iii) Food employee and supervisory training plan specified under Subsection 10-2(1)(vi) that addresses the food safety issues of concern;~~

~~—(iv) A statement of standard operating procedures for the plan under consideration including clearly identifying:~~

~~—(A) Each critical control point;~~

~~—(B) The critical limits for each critical control point;~~

~~—(C) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;~~

~~—(D) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;~~

~~—(E) Action to be taken by the person in charge if the critical limits for each critical control point are not met, and~~

~~—(F) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and~~

~~—(v) Additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.~~

~~—(2) Trade Secrets.~~

~~The regulatory authority shall treat as confidential in accordance with law, information that meets the criteria under law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under Sections 10-2(1)(b) and 10-2(1)(d).~~

~~—(3) Preoperational Inspections.~~

~~The regulatory authority shall conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans and is in compliance with law and this rule.~~

~~—10-3. Permission to Operate.~~

~~—(1) Prerequisite for Operation.~~

~~A person may not operate a food establishment without being under inspection by the UDAF.~~

~~—(2) Notification Procedure.~~

~~—(a) Notification 30 Calendar Days Before Proposed Opening.~~

~~An applicant shall notify the UDAF of its intent to operate a food establishment at least 30 calendar days before the date planned for opening a food establishment.~~

~~—(b) Qualifications and Responsibilities of Applicants.~~

~~To qualify to operate a food establishment, an applicant shall:~~

~~—(i) Be an owner of the establishment or an officer of the legal ownership;~~

~~—(ii) Comply with the requirements of this rule;~~

~~—(iii) As specified under Section 10-4(2)(a), agree to permit access to the food establishment and to provide required information.~~

~~—(e) Information Required.~~

~~The information shall include:~~

~~—(i) The name, mailing address, telephone number, of the owner of the food establishment and the name, mailing address, and location of the food establishment;~~

~~—(ii) Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;~~

~~— (iii) A statement specifying whether the food establishment:~~
~~— (A) Is mobile or stationary and temporary or permanent, and~~
~~— (B) Is an operation that includes one or more of the following:~~
~~— (I) Prepares, offers for sale, or serves potentially hazardous food, or~~
~~— (II) Prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing;~~
~~— (III) Prepares food as specified under Subsection (iii)(B)(II) of this section for delivery to and consumption at a location off the premises of the food establishment where it is prepared;~~
~~— (IV) Prepares food as specified under Subsection (iii)(B)(II) of this section for service to a highly susceptible population;~~
~~— (V) Will be using time as a public health control for specific food;~~
~~— (VI) Prepares only food that is not potentially hazardous, or~~
~~— (VI) Does not prepare, but offers for sale only prepackaged food that is not potentially hazardous;~~
~~— (iii) The names, title, address, and telephone number of the person directly responsible for the food establishment;~~
~~— (iv) The names, titles, and addresses of:~~
~~— (A) The persons comprising the legal ownership as specified under Subsection (ii) of this section including the owners and officers, and~~
~~— (B) The local resident agent if one is required based on the type of legal ownership;~~
~~— (iv) A statement signed by the owner or responsible party that:~~
~~— (A) Attests to the accuracy of the information provided, and~~
~~— (B) Affirms that the applicant will:~~
~~— (I) Comply with this rule, and~~
~~— (II) Allow the regulatory authority access to the establishment as specified under Section 10-4(2)(a) and to the records specified under Sections 4-2(3)(b) and 6-2(5)(c) and Subsection 10-2(1)(d)(iv); and~~
~~— (v) Other information required by the regulatory authority.~~
~~(3) New, Converted, or Remodeled Establishments:~~
~~(a) Permission to operate:~~
~~For food establishments that are required to submit plans as specified under Section 10-2(1)(a) the regulatory authority shall give them permission to operate a food establishment after:~~
~~— (i) The information is obtained;~~
~~— (ii) The required plans, specifications, and information are reviewed and approved; and~~
~~— (iii) A preoperational inspection shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this rule.~~
~~(b) Existing Establishments and Change of Ownership:~~
~~(i) The regulatory authority shall be notified of a change of ownership in an existing food establishment.~~
~~— (ii) The information required under 10-3(2)(c) shall be obtained.~~
~~— (iii) An inspection shall show that the establishment is in compliance with this rule.~~
~~(c) Denial of Approval to Operate a Food Establishment, Written Notification:~~
~~If an application for a business license or permission to operate a food establishment is denied, the regulatory authority shall provide the owner with a notice that includes:~~
~~— (i) The specific reasons and rule citations for the denial;~~
~~— (ii) The actions, if any, that the applicant must take to qualify; and~~
~~— (iii) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided under law.~~
~~— (d) Responsibilities of the Regulatory Authority:~~

~~— (i) Upon request, the regulatory authority shall provide a copy of the Utah Food Protection Rule at its cost.~~
~~— (ii) Failure to provide the information specified under Subsection (i) of this section does not prevent the regulatory authority from taking authorized action or seeking remedies if the owner fails to comply with this rule or an order, warning, or directive of the regulatory authority.~~
~~— (e) Responsibilities of the Owner or Responsible Party:~~
~~The owner or responsible party shall:~~
~~(i) Comply with the provisions of this rule including the conditions of a granted variance as specified under Section 10-1(3)(e), and approved plans as specified under Section 10-2(1)(b);~~
~~(ii) If a food establishment is required under Section 10-2(1)(c) to operate under a HACCP plan, comply with the plan as specified under Section 10-1(3)(e);~~
~~(iii) Immediately contact the regulatory authority to report an illness of an applicant or employee as specified under Section 3-2(e);~~
~~(iv) Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified under Section 10-4(2)(j);~~
~~(v) Allow representatives of the regulatory authority access to the food establishment as specified under Section 10-4(2)(a);~~
~~(vi) Except as specified under (vii) of this section, replace existing facilities and equipment specified under Section 10-1(1) with facilities and equipment that comply with this rule if:~~
~~(A) The regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or no longer comply with the criteria upon which the facilities and equipment were accepted;~~
~~(B) The regulatory authority directs the replacement of the facilities and equipment because of a change of ownership; or~~
~~(C) The facilities and equipment are replaced in the normal course of operation.~~
~~(vii) Upgrade or replace refrigeration equipment as specified under Subsection 4-5(1)(f)(iii), if the circumstances specified under Subsections (v)(A)-(C) of this section do not occur first, and 5 years pass after the regulatory authority adopts this rule;~~
~~(viii) Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the owner's food establishment or in response to community emergencies;~~
~~(ix) Accept notices issued and served by the regulatory authority according to law; and~~
~~(x) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this rule or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.~~
~~10-4. Inspections and Correction of Violations.~~
~~(1) Performance and Risk Based:~~
~~The regulatory authority shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this rule and the establishment's potential as a vector of foodborne illness by evaluating:~~
~~(i) Past performance, for nonconformance with rule or HACCP plan requirements that are critical;~~
~~(ii) Past performance, for numerous or repeat violations of rule or HACCP plan requirements that are noncritical;~~
~~(iii) Past performance, for complaints investigated and found to be valid;~~

—(iv) The hazards associated with the particular foods that are prepared, stored, or served;

—(v) The type of operation including the methods and extent of food storage, preparation, and service.

—(2) Access.

—(a) Allowed at Reasonable Times after Due Notice.

—After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the food establishment is in compliance with this rule by permitting access to the establishment within 15 minutes, allowing inspection, and providing information and records specified in this rule and to which the regulatory authority is entitled according to law, during the food establishment's hours of operation and other reasonable times.

—(b) Refusal, Notification of Right to Access, and Final Request for Access.

—If a person denies access to the regulatory authority, the regulatory authority shall:

—(i) Inform the person that:

—(A) The owner or responsible party is required by law to allow access to the regulatory authority; and

—(B) If access is denied, an order may issued by the appropriate authority requesting access or a search warrant obtained to allow access; and

—(ii) Make a final request for access.

—(c) Refusal, Reporting.

—If after the regulatory authority presents credentials and provides notice as specified under Section 10-4(2)(a), explains the authority upon which access is requested, and makes a final request for access as specified under Section 10-4(2)(b), the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

—(d) Order to Gain Access.

—If denied access to a food establishment for an authorized purpose and after complying with 10-4(2)(c) of this rule may issue a Violation and Order for Corrective Action or obtain a search warrant to gain access as provided under law.

—(e) Documenting Information and Observations.

—The regulatory authority shall document on an inspection report form:

—(i) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under Subsection 10-3(2)(c)(iii), inspection date, and other information such as type of water supply and sewage disposal; and

—(ii) Specific factual observations of violative conditions or other deviations from this rule that require correction by including:

—(A) Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this rule specified under Section 3-1(2)(a);

—(B) Failure of food employees and the person in charge to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified under Sections 3-2(d) and (e);

—(C) Nonconformance with critical items of this rule;

—(D) Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under Subsection 10-1(3)(e);

—(E) Failure of the person in charge to provide records required by the regulatory authority for determining conformance with a HACCP plan as specified under Subsection 10-2(1)(d)(iv), and

—(F) Nonconformance with critical limits of a HACCP plan.

—(f) Specifying Time Frame for Corrections.

—The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under Sections 10-4(2)(f), (l), and (n).

—(g) Issuing Report and Obtaining Acknowledgment of Receipt.

—At the conclusion of the inspection and according to law, the regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the owner or to the person in charge, and request a signed acknowledgment of receipt.

—(h) Refusal to Sign Acknowledgment.

—The regulatory authority shall:

—(i) Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified under Section 10-4(2)(a):

—(A) An acknowledgment of receipt is not an agreement with findings;

—(B) Refusal to sign an acknowledgment of receipt will not affect the person in charge's obligation to correct the violations noted in the inspection report within the time frames specified, and

—(C) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the food establishment; and

—(ii) Make a final request that the person in charge sign an acknowledgment of receipt of inspectional findings.

—(i) Public Information.

—Except as specified under Section 10-2(2), the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it under law.

—(j) Ceasing Operations and Reporting.

—(i) A person in charge shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health, except as specified in Subsection (ii) of this section;

—(ii) A person in charge need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

—(k) Resumption of Operations.

—If operations are discontinued as specified under Section 10-4(2)(f) or otherwise according to law, the owner or person in charge shall obtain approval from the regulatory authority before resuming operations.

—(l) Timely Correction.

—(i) A person in charge shall at the time of inspection correct a critical violation of this rule and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit, except as specified in Subsection (ii) of this section.

—(ii) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the person in charge to correct critical rule violations or HACCP plan deviations.

—(m) Verification and Documentation of Correction.

—(i) After observing at the time of inspection a correction of a critical violation or deviation, the regulatory authority shall enter the

violation and information about the corrective action on the inspection report.

— (ii) As specified under Subsection 10-4(2)(i)(ii), after receiving notification that the person in charge has corrected a critical violation or HACCP plan deviation, or at the end of the specified period of time, the regulatory authority shall verify correction of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records.

— (n) Time Frame for Correction.

— (i) The owner or person in charge shall correct noncritical violations by the next regular inspection, a date and time agreed to, or as specified by the regulatory authority, except as specified under Subsection (ii) of this section.

— (ii) The regulatory authority may approve a compliance schedule that extends beyond the time limits specified under Subsection (i) of this section if a written schedule of compliance is submitted by owner or person in charge and no health hazard exists or will result from allowing an extended schedule for compliance.

— 10-5. Prevention of Foodborne Disease Transmission by Employees.

— (a) Obtaining Information: Personal History of Illness, Medical Examination, and Specimen Analysis.

— The regulatory authority shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

— (i) Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and

— (ii) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees, and

— (iii) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703.

— (b) Restriction or Exclusion of Food Employee.

— Based on the findings of an investigation related to an employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected employee or owner or person in charge instituting one or more of the following control measures:

— (i) Restricting the employee's services to specific areas and tasks in a food establishment that present no risk of transmitting the disease;

— (ii) Excluding the employee from a food establishment.

— (e) Restriction or Exclusion Order: Warning or Hearing Not Required, Information Required in Order.

— Based on the findings of the investigation as specified under Section 10-5(a) and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected employee or the owner without prior warning, notice of a hearing, or a hearing if the order:

— (i) States the reasons for the restriction or exclusion that is ordered;

— (ii) States the evidence that the employee or owner shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;

— (iii) States that the suspected employee or the owner holder may request an appeal hearing by submitting a timely request as provided under law; and

— (iv) Provides the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

— (d) Release of Employee from Restriction or Exclusion.

— The regulatory authority shall release an employee from restriction or exclusion according to law and the following conditions:

— (i) An employee who was infected with *Salmonella typhi* if the employee's stools are negative for *S. typhi* based on testing of at least 3 consecutive stool specimen cultures that are taken:

— (A) Not earlier than 1 month after onset;

— (B) At least 48 hours after discontinuance of antibiotics, and

— (C) At least 24 hours apart; and

— (ii) If one of the cultures taken as specified under Subsection (i) of this section is positive, repeat cultures are taken at intervals of 1 month until at least 3 consecutive negative stool specimen cultures are obtained.

— (iii) An employee who was infected with *Shigella spp.* or *Escherichia coli O157:H7* if the employee's stools are negative for *Shigella spp.* or *E. coli O157:H7* based on testing of 2 consecutive stool specimen cultures that are taken:

— (A) Not earlier than 48 hours after discontinuance of antibiotics; and

— (B) At least 24 hours apart.

— (iv) An employee who was infected with hepatitis A virus if:

— (A) Symptoms cease; or

— (B) At least 2 blood tests show falling liver enzymes.

— 10-6. Embargo and Destruction of Adulterated Food Products Authorized.

— (1) The embargo of adulterated food products is authorized under 4-5.

— (a) The regulatory authority may place a hold order on food found to be adulterated and unfit for human consumption.

— (b) The regulatory authority may issue a hold order to the person in charge or to a person who owns or controls the food, without prior warning, notice of a hearing, or a hearing on the hold order.

— (2) If a hold order is sustained upon appeal or if a timely request for an appeal hearing is not filed, the regulatory authority may order the person in charge or the owner or other person who owns or has custody of the food to bring the food into compliance with this rule or to destroy or denature the food under the regulatory authority's supervision.

— Continuing Violations.

— Each day on which a violation occurs, is a separate violation under this rule.]

R70-530-1. Authority and Purpose.

(1) Authority.

— Promulgated under the authority of the Section 4-5-17.

(2) Purpose.

— This rule shall be liberally construed and applied to promote its underlying purpose of safeguarding public health and providing to consumers food that is safe, unadulterated, and honestly presented.

R70-530-2. Scope.

— This rule establishes definitions; sets standards for management and personnel, food operations, equipment, and facilities; and provides for food establishment plan review, inspection, and employee restriction. It shall be used to regulate bakeries, grocery and convenience stores, meat markets, food and grain processors, warehouses and any other establishment meeting the definition of a food establishment.

R70-530-3 Incorporation by Reference.

(1) The food standards, labeling requirements and procedures as specified in 21 CFR, 1 through 200, April 1, 2008 edition, 40 CFR 185,

July 1, 2007 edition, and 9 CFR 200 to End, January 1, 2008 edition, are incorporated by reference.

(2) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 2005, Chapters 1 through 8, Annex 1, and Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402 are adopted and incorporated by reference, with the exclusion of Sections 8-302.14(C)(2),(D) and (E), 8-805.40, and 8-809.20; and

(3) with the following additions or amendments:

(a) Amend section 8-103.10 to read:

8-103.10 Modifications and Waivers.

(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.

(b) Amend section 8-103.11 to add:

(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active management control of this risk factor at all times.

(c) Amend Section 8-302.14 (C) to read:

A statement specifying whether the food establishment is mobile or stationary and temporary or permanent.

(d) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).

(e) Amend section 8-304.10(A) to read:

(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency.

(f) Amend section 8-304.11(J) to read:

Accept notices issued and served by the REGULATORY AUTHORITY according to LAW:

(g) Amend section 8-304.11(K) to read:

Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Code or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

(h) Amend section 8-401.10(A) to read:

(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations.

(i) Amend section 8-501.10(B) to read:

(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee;

(j) Add section 8-501.10(C) to read:

(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703.

(k) Amend section 8-601.10 to read:

Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions.

(l) Amend section 8-701.30 to read:

Service is effective at the time the notice is served or when service is made as specified in section 8-701.20(B).

(m) Amend section 8-803.10 to read:

8-803.10 Embargo, Detainment and Destruction of Adulterated Food Products Authorized.

(A) The embargo and detainment of adulterated food products is authorized under Section 4-5-5, UCA.

(B) The regulatory authority may place an embargo or detainment tag on food found to be adulterated and unfit for human consumption.

(C) The regulatory authority may issue a hold order to the person in charge or to a person who owns or controls the food, without prior warning, notice of a hearing, or a hearing on the hold order, where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption.

(D) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, the regulatory authority may condemn, destroy or render unsalable for human food the adulterated food if deemed necessary for the protection of the public health.

(E) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping.

(F) If a hold order is sustained upon appeal or if a timely request for an appeal hearing is not filed, the regulatory authority may order the person in charge or the owner or other person who owns or has custody of the food to bring the food into compliance with this rule or to destroy or denature the food under the regulatory authority's supervision.

(n) Amend section 8-803.60 to read:

The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11.

(o) Amend section 8-803.90 to read:

The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated.

(p) Amend section 8-804.30 number/catchline to read:

8-804.30 Contents of the Summary Suspension Notice.

(q) Amend section 8-805.10(A) to read:

(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties.

(r) Amend section 8-805.20 to read:

A response to a hearing notice or a request for a hearing as specified in section 8-805.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-805.30(B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any.

(s) Amend section 8-805.50(A)(1) to read:

(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:

(t) Adopt subsections 8-805.50(A)(1)(a) through (c) without changes.

(v) Amend subsection 8-805.50(A)(2) to read:

(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-805.10(C) or for matters as determined necessary by the regulatory authority.

(v) Amend section 8-805.60 number/catchline to read:

8-805.60 Notice of Hearing Contents.

(w) Amend section 8-805.80 number/catchline to read:

8-805.80 Expedient and Impartial Hearing.

(x) Amend section 8-805.90 number/catchline to read:

8-805.90 Confidentiality of Hearing and Proceedings.

(y) Amend section 8-805.90(A) to read:

(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law.

(z) Amend section 8-806.30(B) to read:

(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer,

(aa) Adopt subsections 8-806.30(B)(1) through (2) without changes.

(ab) Amend section 8-807.60 to read:

Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer.

(ac) Amend section 8-808.20 to read:

Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review.

(ad) Amend section 8-811.10(B) to read:

(B) Any person who violates any provision of this rule may be assessed a civil penalty not to exceed the sum of \$5,000.00 or be punished for violation of a class B misdemeanor for the first violation. Each day the violation exists may constitute a separate violation. For any subsequent similar violation within two years, the person may be punished for violation of a class A misdemeanor as provided in section 26-23-6.

(ae) Amend section 8-813.10 number/catchline to read:

8-813.10 Petitions, Penalties, Contempt, and Continuing Violations.

(af) Amend section 8-813.10(B) to replace the phrase "designate amount" with the phrase "\$5,000".

(ag) Add paragraph 8-813.10(D) to read:

(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order.

(4) The requirements of the Utah Uniform Building Standards Act Rules as found in Sections R156-701(1)(c), and R156-56-803 are adopted and incorporated by reference.

KEY: food safety, inspections

Date of Enactment or Last Substantive Amendment: [~~November 2, 1999~~2008

Notice of Continuation: March 12, 2007

Authorizing, and Implemented or Interpreted Law: 4-5-17

◆ ————— ◆

Agriculture and Food, Regulatory Services

R70-560

Cottage Food Production Operations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31430

FILED: 05/14/2008, 15:36

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It has been determined that certain sections of the existing rule are beyond the scope of the enabling legislation.

SUMMARY OF THE RULE OR CHANGE: It is proposed that the requirements that cottage food production operations be in compliance with all other laws be removed. It is also proposed that the prohibition on out-of-state internet sales of cottage foods be removed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-5-9.5

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There will be minor savings to the Department due to faster processing and approval of applications.

❖ **LOCAL GOVERNMENTS:** No costs or savings to local governments have been identified. There may be some savings in that compliance with local regulations will no longer be specified.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Industry members report that the changes will allow them to go into production faster than they otherwise would in some cases. This will reduce their costs and improve their revenues to an unspecified extent.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The costs of compliance with this rule will be reduced in some cases since the review and approval time will be reduced.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule revision is necessary to bring the rule into conformity with the enabling legislation. Leonard M. Blackham, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3034, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kathleen Mathews, Richard W Clark, or Doug Pearson at the above address, by phone at 801-538-7103, 801-538-7150, or 801-538-7144, by FAX at 801-538-7126, 801-538-7126, or 801-538-7169, or by Internet E-mail at kmathews@utah.gov, RICHARDWCLARK@utah.gov, or dpearson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Leonard M. Blackham, Commissioner

R70. Agriculture and Food, Regulatory Services.

R70-560. Inspection and Regulation of Cottage Food Production Operations.

R70-560-4. Production Requirements.

- (1) A cottage food production operation shall:
 - (a) Ensure that each operator holds a valid food handler's permit;
 - (b) Use finished and cleanable surfaces;
 - (c) Maintain acceptable sanitary standards and practices;
 - (d) Provide separate storage from domestic storage, including refrigerated storage;
 - (e) ~~Provide written evidence of compliance with zoning, building and other regulatory codes;~~
 - ~~(f) Provide for annual water testing if not connected to a public water system; and~~
 - ~~(g) Keep a sample of each food for 14 days. The samples shall be labeled with the production date and time.~~
- (2) A cottage food production operation shall comply with R70-530, except that it shall not be required to:
 - (a) Have commercial surfaces such as stainless steel counters or cabinets;
 - (b) Have a commercial grade sink, dishwasher or oven;
 - (c) Have a separate kitchen; or
 - (d) Submit plans and specifications before construction or remodeling;
- (3) A cottage food production operation is prohibited from all of the following:
 - (a) Conducting domestic activities in the kitchen when producing food;
 - (b) Allowing pets in the kitchen;
 - (c) Allowing free-roaming pets in the residence;
 - (d) Washing out or cleaning pet cages, pans and similar items in the kitchen; and
 - (e) Allowing entry of non-employees into the kitchen while producing food.
- (4) A cottage food must be prepared by following the recipe used to prepare the food when it was submitted for the approval testing

required in Subsection R70-560-3(1). When a process authority has recommended or stipulated production processes or criteria for a food, these must be followed when the food is produced. The recipe and process authority recommendations and stipulations shall be available in the facility for review by the department.

R70-560-5. Inspections, Registration and Investigations.

(1) The Department shall inspect a cottage food production operation:

(a) Prior to issuing a registration for the cottage food production operation; and

(b) If the Department has reason to believe the cottage food production operation is in violation of this chapter, or administrative rule, adopted pursuant to this section, or is operating in an unsanitary manner.

(2) A cottage food production operation must register with the Department as a food establishment pursuant to Rule R70-540 and pay the required fee.

(3) Notwithstanding the provisions of Rule R70-540, the Department shall issue a registration to an applicant for a cottage food production operation if the applicant:

(a) Applies for the registration;

(b) Passes the inspection required by Subsection R70-560-5(1);

(c) Pays the fee required by the department; and

(d) Meets the requirements of this section[;].

~~(e) Provides written evidence of compliance with local zoning and business codes;~~

~~(f) Complies with all other, state, municipal, county codes, including plumbing codes, electrical codes and safety codes.~~

(4) The registration issued under Rule R70-540 shall be displayed at the cottage food production operation. A copy of the registration shall be displayed at farmers markets, roadside stands and other places at which the operator sells food from a fixed structure that is permanent or temporary and which is owned, rented or leased by the operator of the cottage food production operation.

R70-560-8. Regulatory Jurisdiction.

(1) Notwithstanding the provisions of Section 26A-1-114, a local health department:

(a) Does not have jurisdiction to regulate the production of food at a cottage food production operation, operating in compliance with this section, as long as the products are not offered to the public for consumption on the premises; and

(b) Does have jurisdiction to investigate a cottage food production operation in any investigation into the cause of a food born illness outbreak.

(2) A food service establishment as defined in Section 26-15a-102, may not use a product produced in a cottage food operation as an ingredient in any food that is prepared by the food establishment and offered by the food establishment to the public for consumption.[

~~(3) Interstate sales of cottage food production operation produced foods are prohibited.]~~

KEY: food safety, cottage foods, food establishment registration, inspections

Date of Enactment or Last Substantive Amendment: [August 7, 2007] July 8, 2008

Authorizing, and Implemented or Interpreted Law: 4-5-9.5

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Commerce, Administration
R151-2-4
 Forms

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 31385
 FILED: 05/06/2008, 13:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify and simplify existing provisions regarding the use of Department forms to request records.

SUMMARY OF THE RULE OR CHANGE: Subsection R151-2-4(1) already requires the use of Department forms, and it is unnecessary to restate that in Subsections R151-2-4(1)(a) and (c). Subsection R151-2-4(1)(b) is deleted because the form it refers to is not used in the Department.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 2

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This rule filing does not add any costs to the state budget because the amendments merely clarify existing procedures.
- ❖ LOCAL GOVERNMENTS: Local governments that request records from the Department would experience no new costs from this clarifying amendment.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Small businesses and persons other than businesses would experience no new costs from this clarifying amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons would experience no new costs from this clarifying amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated as a result of this filing which merely clarifies existing procedures. Francine A. Giani, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
 ADMINISTRATION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY UT 84111-2316, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Masuda Medcalf at the above address, by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Francine Giani, Executive Director

R151. Commerce, Administration.

R151-2. Government Records Access and Management Act Rule. R151-2-4. Forms.

(1) The forms described as follows, or a written document containing substantially similar information to that requested in the forms, shall be completed by requesters in connection with records requests, unless a division waives written requests.

(a) Form 2-204(1), "Request for Records", ~~[shall be used by all persons requesting records from the department or its divisions. It is intended to assist persons who request records to comply with the requirements of Subsection 63G-2-204 (1) regarding the contents of a request. The form requires the requester's name, address, telephone, organization, if any, a description of the records requested, and information regarding the requester's status, for records which are not public.~~

~~(b) [Form 2-206(2), "Certification by Requesting Governmental Entity", shall be used by another governmental entity requesting controlled or private records from a division or the department, pursuant to Subsection 63G-2-206 (2). This form requires both the information to be provided in Form 2-204(1) and certain representations required from the governmental entity, if the information sought is not public.~~

~~—(c)—~~ [Form 2-206(5), "Disclosure and Agreement", shall] is to be used when another governmental entity requests controlled, private or protected records, pursuant to Subsection 63G-2-206 (5). This form discloses to the governmental entity certain information regarding restrictions on access and obtains the written agreement of the governmental entity to abide with those restrictions.

(2) The department or its divisions may use forms to respond to requests for records.

KEY: government documents, freedom of information, public records

Date of Enactment or Last Substantive Amendment: ~~July 2, 2002~~ 2008

Notice of Continuation: February 15, 2007

Authorizing, and Implemented or Interpreted Law: 63-2-204; 63-2-201(5)(b); 63-2-201(10)(a); 63-2-202(8); 63-2-308; 63-2-401; 63-2-603



Commerce, Occupational and
 Professional Licensing
R156-17b
 Pharmacy Practice Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31425

FILED: 05/13/2008, 10:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and State Board of Pharmacy are proposing amendments to this rule to make practices in Utah consistent with national standards for the nation's drug supplies.

SUMMARY OF THE RULE OR CHANGE: In Section R156-17b-102, numerous definitions have been added to this section that directly correlate to changes being proposed in Section R156-17b-615 with respect to the operating standards for Class C pharmacy - pharmaceutical wholesalers, distributors, and manufacturers in Utah. In Subsection R156-17b-102(39), the United States Pharmacopeia/National Formulary (USP/NF) has been updated to the most current edition. In Sections R156-17b-307 and R156-17b-308, statutory and rule citations have been updated. In Section R156-17b-615, amendments to this section are being added to address new requirements and regulations throughout the United States to more actively address the safety of the supply of pharmaceuticals distributed to United States pharmacies and consequently to the end users (patients). These proposed amendments have been done in concert with the State Board of Pharmacy, representatives from Utah licensed wholesalers/distributors/manufacturers, and a body of national participants in the wholesale/distributor/manufacture arena to ensure high quality and safety in the nation's supply of drugs being sold to consumers.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 58-17b-101 and 58-37-1, and Subsections 58-17b-601(1), 58-1-106(1)(a), and 58-1-202(1)(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Updates the United States Pharmacopeia/National Formulary (USP-NF) to the 2008 edition, which is official from May 1, 2008, and includes Supplement 2, dated December 1, 2007

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division anticipates it will incur minimal costs of approximately \$100 to reprint the rule once the proposed amendments are made effective. In the past, State Board of Pharmacy members have been involved on a voluntary basis to help affected licensees understand amended rules and it is anticipated that this situation will continue as a result of these proposed amendments. However, it may be necessary for the Division to send some documentation/instructions to approximately 500 licensed pharmacies throughout the state to ensure that these new proposed amendments are understood. Therefore, the Division may incur additional costs of approximately \$210 to mail out information to the licensed pharmacies throughout the state. Any costs incurred will be absorbed in the Division's current budget.

❖ **LOCAL GOVERNMENTS:** Proposed amendments do not apply to local governments. Proposed amendments only apply to

license classifications regulated under Title 58, Chapter 17b, and this rule.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The Division anticipates that the 500 licensed dispensing pharmacies located throughout Utah, some of which may qualify as a small business, should not be impacted financially as a result of the proposed amendments, but pharmacists-in-charge in the pharmacies will need to become knowledgeable about tracking drugs through the systems. The Division anticipates the approximately 60 currently licensed in Utah pharmaceutical wholesalers, distributors, and manufacturers, some of which may qualify as a small business, will need to submit additional information at renewal time but should not be impacted financially at this time. In time, electronic tracking hardware and software may be required by the Food and Drug Administration (FDA) but this has not even been developed yet. Any new applicant for a pharmaceutical wholesaler/distributor/manufacture license will submit all required information upon initial application and at renewal time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division anticipates that the 500 licensed dispensing pharmacies located throughout Utah should not be impacted financially as a result of the proposed amendments, but pharmacists-in-charge in the pharmacies will need to become knowledgeable about tracking drugs through the systems. The Division anticipates the approximately 60 currently licensed in Utah pharmaceutical wholesalers, distributors, and manufacturers will need to submit additional information at renewal time but should not be impacted financially at this time. In time, electronic tracking hardware and software may be required by the Food and Drug Administration (FDA) but this has not even been developed yet. Any new applicant for a pharmaceutical wholesaler/distributor/manufacture license will submit all required information upon initial application and at renewal time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule change adopts recent national standards which address the safety of pharmaceuticals distributed in the United States and is made with input from the industry. Although there will be additional tracking procedures for pharmacists-in-charge, there is no measurable fiscal impact to businesses anticipated from the adoption of these national standards. Francine A. Giani, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Diana Baker at the above address, by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at dbaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/24/2008 at 10:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: F. David Stanley, Director

R156. Commerce, Occupational and Professional Licensing.

R156-17b. Pharmacy Practice Act Rule.

R156-17b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this rule:

(1) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.

(2) "Analytical laboratory":

(a) means a facility in possession of prescription drugs for the purpose of analysis; and

(b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.

(3) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.

(4) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

(~~3~~)5 "Central Order Entry" means a pharmacy where functions are performed at the request of another pharmacy to perform processing functions such as dispensing, drug review, refill authorizations, and therapeutic interventions.

(6) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.

(7) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.

(8) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned,

operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

(9) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2), including any amendments thereto.

(10) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

(~~5~~)11 "Dispense", as defined in Subsection 58-17b-102(23), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

(12) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchase the product directly from the manufacturer or from one of these entities.

(~~6~~)13 "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(~~4~~)14 "Drugs", as used in this rule, means drugs or devices.

(15) "FDA" means the United States Food and Drug Administration and any successor agency.

(~~7~~)16 "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

(~~8~~)17 "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(~~9~~)18 "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

(~~9~~)19 "Legend drug" or "prescription drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(~~14~~20) "Maintenance medications" means medications the patient takes on an ongoing basis.

(21) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition. Such manufacturer's exclusive distributor must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(~~12~~22) "MPJE" means the Multistate Jurisprudence Examination.

(~~13~~23) "NABP" means the National Association of Boards of Pharmacy.

(~~14~~24) "NAPLEX" means North American Pharmacy Licensing Examination.

(25) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (12), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

(a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

(~~15~~26) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(27) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(~~16~~28) "Prescription files" means all hard-copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

(~~17~~29) "PTCB" means the Pharmacy Technician Certification Board.

(~~18~~30) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

(~~19~~31) "Refill" means to fill again.

(~~20~~32) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the

distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(~~24~~33) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy or pharmacist for the purpose of removing those drugs from stock and destroying them.

(~~22~~34) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

(35) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale. Such third party logistics provider must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(~~23~~36) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

(~~24~~37) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and expiration date for the drug.

(~~25~~38) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

(~~26~~39) "USP-NF" means the United States Pharmacopeia-National Formulary (USP ~~30~~31-NF ~~25~~26), 200~~7~~8 edition, which is official from May 1, ~~2007~~2008 through Supplement ~~4~~2, dated ~~August 1, 2007~~December 1, 2007, which is hereby adopted and incorporated by reference.

(~~27~~40) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient. The term includes a person who derives, produces, prepares or repackages drugs or medical devices that are restricted by federal law to sales based on the order of a physician for resale.

(41) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

(a) intracompany sales or transfers;

(b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;

(c) the sale, purchase, or trade of a drug pursuant to a prescription;

(d) the distribution of drug samples;

(e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;

(f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;

~~(g) the sale, purchase or exchange of blood or blood components for transfusions;~~

~~(h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;~~

~~(i) delivery of a prescription drug by a common carrier; or~~

~~(j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.]~~

~~(28) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:~~

~~(a) sales within a company;~~

~~(b) the purchase or other acquisition of a drug by a health care facility or a pharmacy that is a member of a purchasing organization;~~

~~(c) the sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug;~~

~~(i) between health care facilities or pharmacies that are under common control;~~

~~(ii) for emergency medical reasons; or~~

~~(iii) pursuant to a prescription;~~

~~(d) a transfer of drugs, in an amount not to exceed five percent of the total annual sales, by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;~~

~~(e) the distribution of drug samples by a representative of the manufacturer or distributor; or~~

~~(f) the sale, purchase or exchange of blood or blood components for transfusions.]~~

R156-17b-307. Licensure - Meet with the Board.

In accordance with Subsections 58-1-202(1)(d) and 58-1-301(3), an applicant for licensure under Title 58, Chapter 17b may be required to meet with the State Board of Pharmacy for the purpose of evaluating the applicant's qualifications for licensure.

R156-17b-308. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 17b is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

(3) An intern license may be extended upon the request of the licensee and approval by the Division under the following conditions:

(a) the intern applied to the Division for a pharmacist license and to sit for the NAPLEX and MJPE examinations within three calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(b) the intern lacks the required number of internship hours for licensure.

(c) An individual must pass the NAPLEX and MJPE examinations and seek licensure as a pharmacist within six months of graduation and receipt of a degree from a school or college of pharmacy which is accredited by the ACPE. An internship license will not be extended beyond the six month time frame from graduation and receipt of a degree.

(4) The extended internship hours shall be under the direct supervision of a preceptor who meets the criteria established in R156-17b-306(4).

R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer in Utah.

In accordance with Subsections 58-17b-102(48) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

(1) ~~[A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs.]~~ Every pharmaceutical wholesaler or manufacturer that engages in the wholesale distribution and manufacturing of drugs or medical devices located in this state shall be licensed by the Division. A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs. Business names cannot be identical to the name used by another unrelated wholesaler licensed to purchase drugs and devices in Utah.

(2) Manufacturers distributing only their own FDA-approved prescription drugs or co-licensed product shall satisfy this requirement by registering their establishment with the Federal Food and Drug Administration pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205, including any amendments thereto, to the Division.

(3) An applicant for licensure as a pharmaceutical wholesale distributor must provide the following minimum information:

(a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");

(b) Name of the owner and operator of the license as follows:

(i) if a person, the name, business address, social security number and date of birth;

(ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;

(iii) if a corporation, the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any;

(iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(v) if a limited liability company, the name of each member, social security number of each member, the name of each manager, the name of the limited liability company and federal employer identification number, and the name of the state in which the limited liability company was organized; and

(c) any other relevant information required by the Division.

~~(2)4~~ The [licensee] licensed facility need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a [responsible officer or management employee.] designated representative who meets the following criteria:

(a) is at least 21 years of age;

(b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping related to prescription drugs;

(c) is employed by the applicant full time in a managerial level position;

(d) is actively involved in and aware of the actual daily operation of the pharmaceutical wholesale distribution;

(e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and

(f) is serving in the capacity of a designated representative for only one licensee at a time.

(5) The licensee shall provide the name, business address, and telephone number of a person to serve as the designated representative for each facility of the pharmaceutical wholesaler that engages in the distribution of drugs or devices.

(6) Each facility that engages in pharmaceutical wholesale distribution and manufacturing facilities must undergo an inspection by the Division for the purposes of inspecting the pharmaceutical wholesale distribution or manufacturing operation prior to initial licensure and periodically thereafter with a schedule to be determined by the Division.

(7) All pharmaceutical wholesalers and manufacturer must publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

(8) In accordance with Section 58-17b-307, the Division shall require a criminal background check of the applicant, including but not limited to all key personnel involved in the operation of the pharmaceutical wholesaler or manufacturer, including the most senior person responsible for facility operation, purchasing, and inventory control and the person they report to in order to determine if an applicant or others associated with the ownership, management, or operations of the pharmaceutical wholesaler or manufacturer have committed criminal acts that would constitute grounds for denial of licensure.

(~~3~~)⁹ All Class C pharmacies shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed or in any other way unsuitable for use or entry into distribution or manufacturing;

(e) be maintained in a clean and orderly condition; and

(f) be free from infestation by insects, rodents, birds or vermin of any kind.

(~~4~~)¹⁰ Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs, ~~[or]~~ prescription drug precursors, or prescription drug devices are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

(~~5~~)¹¹ Each facility shall provide the storage of prescription drugs, ~~[and]~~ prescription drug precursors, and prescription drug devices in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug, ~~[or]~~ prescription drug precursor, or prescription drug devices, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs, ~~[or]~~ prescription drug precursors, and prescription drug devices are held to permit review of the record and ensure that the products have not been subjected to conditions which are outside of established limits.

(12) Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs that leave, or have ever left, the normal distribution channel shall, before each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs. The pedigree shall:

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the necessary chain of distribution information shall include:

(i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;

(ii) name and address of each location from which the product was shipped, if different from the owner's;

(iii) transaction dates;

(iv) name of the prescription drug;

(v) dosage form and strength of the prescription drug;

(vi) size of the container;

(vii) number of containers;

(viii) lot number of the prescription drug; and

(ix) name of the manufacturer of the finished dose form.

(b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.

(13) The board shall not require use of an electronic system to identify, validate, track or trace a pedigree for a person or entity licensed by the Division to possess, distribute, supply, dispense or

administer prescription drugs for use by patients, pharmacies, healthcare practitioners, facilities, pharmaceutical wholesale distributors, and manufacturers, until such time as FDA develops and implements standards for the identification, validation, authentication, and tracking and tracing of prescription drugs. Upon implementation of FDA's standards, those federal standards shall supercede any state standards for an electronic pedigree.

~~(6)14~~ Each facility shall ~~[ensure that]~~ comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

~~(b) upon receipt, each outside shipping container containing prescription drugs, [or] prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, [or] prescription drug precursors, or prescription drug devices that are contaminated, reveal damage to the containers or are otherwise unfit for distribution; [; and]~~

~~(i) prescription drugs, prescription drug precursors, or prescription drug devices that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs, prescription drug precursors or prescription drug devices until they are appropriately destroyed or returned to their supplier; and~~

~~(ii) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier;~~

~~(b)c~~ each outgoing shipment shall be carefully inspected for identity of the prescription drug products or devices and to ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions[-];

~~(i) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity;~~

~~(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the receiving pharmaceutical wholesale distributor only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesale distributor under this chapter;~~

~~(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and~~

~~(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure~~

and do not permit the entry of adulterated and counterfeit prescription drugs.

~~(15) A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.~~

~~(16) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsection R156-17b-615(15), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.~~

~~[(7) Each facility shall ensure that:~~

~~(a) prescription drugs or prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs or prescription drug precursors until they are appropriately destroyed or returned to their supplier;~~

~~(b) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier; and~~

~~(c) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity.~~

~~(8)17~~ Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records

shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(~~19~~18) Each facility shall establish, maintain and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;~~and~~

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of ~~two~~ five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within three (3) business days to the Division and/or appropriate federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

(~~19~~19) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(~~14~~20) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(~~12~~21) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(~~13~~22) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a Class C pharmacy, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

KEY: pharmacists, licensing, pharmacies

Date of Enactment or Last Substantive Amendment: ~~May 24, 2007~~2008

Authorizing, and Implemented or Interpreted Law: 58-17b-101; 58-17b-601(1); 58-37-1; 58-1-106(1)(a); 58-1-202(1)(a)



Commerce, Occupational and Professional Licensing **R156-28** Veterinary Practice Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31396

FILED: 05/08/2008, 09:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After completing a full review of this rule, the Division and the Veterinary Board are proposing amendments to update various provisions throughout the rule and to make the rule consistent with current practices.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, the term "rules" has been replaced with the term "rule" where applicable. In Section R156-28-102, several amendments are made in this section to eliminate definitions that are no longer needed as they are included in the governing statute, Title 58, Chapter 28, or are acronyms which are best identified in the text where used. In Section R156-28-302a, amendments are

made to better clarify the education requirements. In Section R156-28-30b, amendments are made to better clarify experience requirements required for licensure as a veterinarian. In Section R156-28-302c, amendments are made to better clarify the examination requirements. Also, the Utah Veterinary Law and Rule Examination is being deleted as a requirement for licensure. Sections R156-28-302d and R156-28-302e are being deleted as these sections are no longer necessary. In Section R156-28-303, added that applicants for license renewal shall meet the continuing education requirements. In Section R156-28-304, amendments are made to better clarify the continuing professional education requirements and to also clarify continuing education waiver requirements. Section R156-28-305 is being deleted as this section is no longer needed. In Section R156-28-502, amendments are made to better clarify unprofessional conduct provisions. Added that failing to conform with generally accepted and recognized standards and ethics of the profession shall be considered unprofessional conduct. In Section R156-28-503, amendments are made to delete provisions that are redundant requirements.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-28-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Adds the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association (AVMA), approved by the Executive Board July 1999; revised November 2003

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs of approximately \$75 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The Division does not anticipate any increased workload for Division licensing personnel as a result of these proposed amendments.

❖ LOCAL GOVERNMENTS: The proposed amendments do not apply to local governments. The proposed amendments only apply to applicants for licensure as a veterinarian or veterinary intern and licensed veterinarians and veterinarian interns.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The proposed amendments only apply to applicants for licensure as a veterinarian or veterinary intern and licensed veterinarians and veterinarian interns. It should be noted that licensees in this profession could be considered a "small business". While the proposed amendments to this rule reflect a large number of technical changes, the basic requirements or cost of meeting the education, experience, and examination requirements do not change in any significant amount. By deleting the law/rule examination, each applicant for licensure will see a savings of \$75. The Division estimates it licenses approximately 34 veterinarians and veterinarian interns in a year for an aggregate savings of \$2,550.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to applicants for licensure as a

veterinarian or veterinary intern and licensed veterinarians and veterinarian interns. While the proposed amendments to this rule reflect a large number of technical changes, the basic requirements or cost of meeting the education, experience, and examination requirements do not change in any significant amount. By deleting the law/rule examination, each applicant for licensure will see a savings of \$75.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated in the rule summary, there is no anticipated fiscal impact to businesses with this rule filing, other than a possible savings to applicants for licensure from the elimination of the law and rule examination. Francine A. Giani, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/26/2008 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-28. Veterinary Practice Act Rule[s].**

R156-28-101. Title.

Th[ese]is rule[s-are] is known as the "Veterinary Practice Act Rule[s]".

R156-28-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 28, as used in Title 58, Chapters 1 and 28 or th[ese]is rule[s]:

(1) [~~"AAVSB", as used in these rules, means the American Association of Veterinary State Boards.~~

~~(2) "AVMA", as used in these rules, means the American Veterinary Medical Association.~~

~~(3) "Direct supervision" means the supervising licensed veterinarian shall be present at the point and time at which professional services are being provided by the student or unlicensed person being supervised.~~

~~—(4)—~~"In association with licensed veterinarians", as used in Subsection 58-28-~~[8]~~307(6), means ~~[providing consultation, performing a special procedure, or providing special expertise for a specialized case in the same facility as the Utah licensed veterinarian who requested the professional services]~~the out of state licensed veterinarian is performing veterinarian services in this state as the result of a request for assistance or consultation initiated by a Utah licensed veterinarian regarding a specific client or patient and the services provided by the out of state licensed veterinarian are limited to that specific request.

~~—(5)—~~"Indirect supervision" means ~~the supervising licensed veterinarian shall be available for immediate voice contact by telephone, radio, or other means and shall provide daily face-to-face consultation and review of cases at the veterinary facility for the veterinary intern or unlicensed person being supervised.~~

~~—(6)—~~"NAVLE", as used in these rules, means the North American Veterinary Licensing Examination.

~~—(7)—~~[2]"NBEC"~~[-as used in these rules;]~~ means the National Board Examination Committee of the American Veterinary Medical Association.

~~—(8)—~~[3]"Patient" means any animal receiving veterinarian services.

~~—(9)—~~[4]"PAVE", as used in these rules, means Program for the Assessment of Veterinary Education Equivalence.

~~—(10)—~~[5]"Practice of veterinary medicine, surgery, and dentistry"~~[means those acts and practices]as defined in Subsection 58-28-2(4)102(11) does not [and-]include[s] the implantation of any electronic device for the purpose of establishing or maintaining positive identification of animals.~~

~~—(11)—~~"Qualified continuing education" means continuing education that meets the standards set forth in Section R156-28-304.

~~—(12)—~~"RACE", as used in these rules, means the Registry of Approved Continuing Education.

~~—(13)—~~"Supervision" as used in Subsection 58-28-8(2) means direct supervision.

~~—(14)—~~[6]"Unprofessional conduct" as defined in Title 58, Chapters 1 and 28, is further defined in accordance with Subsection 58-1-203(~~[5]~~[1])(e) in Section R156-28-502.

~~—(15)—~~[7]"Veterinarian-client-patient relationship" means that the veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal and the need for medical treatment, and the client who is the owner or other caretaker has agreed to follow the instruction of the veterinarian. In addition, there is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal, or by medically appropriate and timely visits to the premises where the animal is kept. In addition, the practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy.

R156-28-103. Authority - Purpose.

This ~~rule[s-are]~~ is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 28.

R156-28-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-1-203(~~[2]~~[1]) and 58-1-301(3), the education requirements for licensure in Subsection 58-28-~~[4(3)]~~302 are defined, clarified, or established as follows.

(1) Each applicant for licensure as a veterinarian shall comply with one of the following:

~~(a) an official transcript demonstrating that the applicant has [must have] graduated from a veterinary college which held current accreditation by the Council on Education of the American Veterinary Medical Association (AVMA) at the time of [his]the applicant's graduation; or [-as evidenced by an official transcript documenting the degree earned and the date of graduation or a notarized diploma.]~~

~~(b) [Each applicant who has received his veterinary education in a foreign veterinary school shall demonstrate educational equivalency of his foreign veterinary school with an accredited domestic veterinary school by submitting a Certificate of Competence issued by the AVMA Educational Commission for Foreign Veterinary Graduates (ECFVG) or the AAVSB Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate]if the applicant received a veterinary degree in a foreign country, demonstrate that the applicant's foreign education is equivalent to the requirements of Subsection R156-28-302a(1)(a) by submitting a Certificate of Competence issued by the AVMA Educational Commission for Foreign Veterinary Graduates (ECFVG) or the American Association of Veterinary State Boards (AAVSB) Program for Assessment of Veterinary Education Equivalence (PAVE).~~

(2) Each applicant for licensure as a veterinarian intern shall demonstrate that the applicant has met the education provided in Subsection R156-28-302a(1); however, if the applicant has graduated, but the educational institution has not yet posted the degree on the official transcript, the applicant may submit the official transcript together with a notarized letter from the dean or registrar of the educational institution, which certifies that the applicant has obtained the degree but it is not yet posted to the official transcript.

R156-28-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(~~[2]~~[1]) and 58-1-301(3), the experience requirements for licensure in Subsection 58-28-~~[4(4)]~~302 are defined, clarified, or established as follows.

(1) Each applicant for licensure as a veterinarian shall:

~~(a) complete [an approved internship which includes a minimum of-]1000 hours of experience while licensed as a veterinarian intern under the supervision of a licensed veterinarian in accordance with the following.~~

~~(i) Experience shall be earned in not less than six months and completed within two years of the date of the application.~~

~~(ii) Experience in the following settings is not acceptable to fulfill this experience requirement:~~

~~(A) temporary employment experiences of less than eight weeks in duration; or~~

~~(B) part time experience of less than 20 hours per week.~~

(iii) Experience completed while employed as unlicensed assistive personnel is not acceptable to fulfill this experience requirement.

(iv) If the experience is completed in a jurisdiction outside of Utah which does not issue licensure as a veterinarian or as a veterinarian intern or comparable licenses or was completed in a setting which does not require licensure, the applicant shall demonstrate that the experience was:

(A) lawfully obtained;

(B) obtained after the applicant met the education requirement specified in Section R156-28-302a;

(C) supervised by a competent supervisor who was licensed as a veterinarian or exempted from licensure, except if the supervisor was exempted from licensure, the applicant must demonstrate the qualifications and competence of the supervisor; and

(D) comparable to experience that would be obtained in a standard veterinarian practice setting in Utah.

(v) Supervision of the intern by the licensed veterinarian may be obtained by "indirect supervision" as defined in Section 58-28-102 provided that the supervisor supplements the indirect supervision with routine face to face contact as the licensed veterinarian deems appropriate using professional judgment.

(vi) Each applicant shall demonstrate completion of the experience required by submitting a verification of experience signed by the applicant and the applicant's supervising veterinarian on forms approved by the Division.

(vii) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(b) In accordance with Subsections 58-37-6(1)(a), 58-37-6(5)(b)(i) and R156-37-305(1), a veterinary intern is not eligible to obtain a controlled substance license during the internship. [supervised veterinary practice to be earned in not less than six consecutive months and not more than 12 consecutive months. Successful completion of an approved internship shall be documented and submitted to the division in a form provided by the division.]

(2) Each veterinary intern shall have a valid Utah veterinary internship license before beginning his 1000 hour internship.

(3) An applicant for a veterinary internship license must make application to the division on a form provided by the division.

(4) A veterinary intern shall practice under the indirect supervision of the licensed Utah veterinarian approved by the division in consultation with the board or a licensed Utah veterinarian designated by the supervising veterinarian. The veterinary intern must reapply to the division for any change of supervising veterinarian.

(5) The 1000 hour internship shall not begin before the applicant has graduated from an AVMA accredited veterinary college, passed the Utah Veterinary Law and Rules Examination and obtained his Utah internship license.

(6) If the applicant is a graduate of a foreign college of veterinary medicine, he must document ECFVG or PAVE certification or acceptance to take the ECFVG or PAVE examination and meet with the board before obtaining a Utah internship license and beginning his 1000 hour internship.

(7) Evidence of a completed internship shall be documented by the supervising veterinarian and the veterinary intern to the division at the time application is made for Utah licensure as a veterinarian on a form provided by the division.]

R156-28-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203([2]1) and 58-1-301(3), the examination requirements for licensure in Subsection 58-28-[4(2)]302(1)(b) are defined, clarified, or established as follows:

(1) ~~[For a]~~ Applicants ~~[sitting for]~~ who passed the examinations listed in this subsection prior to May 1, 2000 shall submit documentation showing they passed:

(a) the National Board Examination (NBE) of the National Board Examination Committee (NBEC) of the American Veterinary Medical Association (AVMA) with a minimum passing score as determined by the NBEC; and

(b) the Clinical Competency Test (CCT) of the NBEC ~~[of the AVMA]~~ with a minimum passing score as determined by the NBEC; ~~and~~

~~(c) the Utah Veterinary Law and Rules Examination with a minimum passing score of 75%].~~

(2) ~~[For a]~~ Applicants who ~~[do not sit for]~~ did not pass the examinations listed in Subsection (1) prior to May 1, 2000 shall submit documentation showing they passed ~~[-~~

~~(a)] the North American Veterinarian Licensing Examination (NAVLE) with a [passing] score as determined by the NBEC; ~~and~~~~

~~(b) the Utah Veterinary Law and Rules Examination with a minimum passing score of 75%].~~

(3) To be eligible to sit for the NAVLE examination, an applicant shall submit the following:

(a) an application for ~~[licensure]~~ approval to sit for the NAVLE examination;

(b) the application fee; and

(c) documentation showing the applicant has met the education requirement specified in Section R156-28-302a or will complete the education requirement at the end of the semester or quarter in which the applicant is currently enrolled. If the applicant is enrolled in the final semester or quarter before obtaining the degree, documentation of the applicant's student status shall be provided by a letter from the ~~[D] dean or registrar of [an approved veterinary school] the educational institution~~ confirming the applicant is a student in good standing and will graduate with the next graduating class; ~~and~~

~~(d) a copy of the test application submitted to NAVLE].~~

R156-28-302d. Qualifications for Licensure - Content of Utah Veterinary Law and Rules Examination.

The Utah Veterinary Law and Rules Examination shall cover five content areas:

(1) the Division of Occupational and Professional Licensing Act, Title 58, Chapter 1;

(2) the General Rules of the Division of Occupational and Professional Licensing, R156-1;

(3) the Veterinary Practice Act, Title 58, Chapter 28;

(4) the Veterinary Practice Act Rules, R156-28; and

(5) the State of Utah rules governing the admission and inspection of livestock, poultry, and other animals, R58-1.

~~R156-28-302e. Qualifications for Licensure—Meet With the Board.~~

~~— Applicants may be requested to meet with the board, at the discretion of the division or board, to satisfy the board that the applicant is qualified to practice veterinary medicine in the state.]~~

R156-28-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 28 is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308a.

(3) Applicants for renewal shall meet the continuing education requirements specified in Section R156-28-304.

R156-28-304. Continuing Professional Education.

In accordance with Section 58-28-306, there is created a continuing professional education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 28. The continuing professional education requirement shall comply with the following criteria.

~~(1) [There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 28.~~

~~(2)]During each two year period commencing on September 30 of each even numbered year, a licensee shall be required to complete not less than 24 hours of qualified continuing professional education directly related to the licensee's professional practice.~~

~~(3)]2 The required number of hours of continuing professional education for an individual who first becomes licensed during the two year period shall be decreased ~~[#]by~~ a pro-rata amount equal to ~~[any]the~~ part of that two year period preceding the date on which that individual first became licensed.~~

~~(4)]3 Qualified continuing professional education under this section shall:~~

~~(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a veterinarian;~~

~~(b) be relevant to the licensee's professional practice;~~

~~(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;~~

~~(d) be prepared and presented by individuals who are qualified by education, training, and experience; and~~

~~(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.~~

~~(5)]4 Credit for continuing professional education shall be recognized in accordance with the following:~~

~~(a) [#]Unlimited hours shall be recognized for continuing professional education as a student or presenter, completed in blocks of time of not less than one hour in formally established classroom courses, seminars, lectures, wet labs, or specific veterinary conferences approved or sponsored by one or more of the following:~~

~~(i) the American Veterinary Medical Association;~~

~~(ii) the Utah Veterinary Medical Association;~~

~~(iii) the American Animal Hospital Association;~~

~~(iv) the American Association of Equine Practitioners;~~

~~(v) the American Association of Bovine Practitioners;~~

~~(vi) certifying boards ~~[approved by the RACE of]~~recognized by the AVMA;~~

~~(vii) the Western Veterinary Conference; or~~

~~(viii) other state veterinary medical associations or state licensing boards; or~~

~~(ix) the Registry of Continuing Education (RACE) of the AASVB.~~

~~(b) [#]No more than five continuing professional education hours may be counted for being the primary author of an article published in a peer reviewed scientific journal, and no more than two continuing professional education hours may be counted for being a secondary author. ~~[; and]~~~~

~~(c) [#]No more than six continuing professional education hours may be in practice management courses.~~

~~(d) Any continuing professional education where there is no instructor or where the instructor is not physically present, shall assure the licensee's participation and acquisition of the knowledge and skills intended by means of an examination. These types of continuing professional education courses include internet, audio/visual recordings, broadcast seminars, mail and other correspondence courses.~~

~~(6)]5 A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.~~

~~(6) A licensee who is unable to complete the continuing professional education requirement for reasons such as a medical or related condition, humanitarian or ecclesiastical services, or extended presence in a geographical area where continuing education is not available, may be excused from the requirement for a period of up to three years as provided in Section R156-1-308d. (7) A licensee who documents that he/she is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years; however, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.]~~

~~R156-28-305. Exemptions From Licensure.~~

~~— In addition to the exemptions from licensure in Sections 58-1-307 and 58-28-8, the following are exempt from the licensing provisions of this chapter, subject to the stated circumstances and conditions:~~

~~(1) any unlicensed personnel of a licensed veterinarian performing duties other than diagnosis, prescription or surgery under the direct supervision of the licensed veterinarian or under the indirect supervision of said licensed veterinarian while carrying out ongoing care for hospitalized patients; and~~

~~(2) the implantation of any electronic device for identifying animals by established humane societies, animal control organizations or governmental agencies that provide appropriate training.~~

R156-28-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) ~~[any deviation in]~~deviating from the minimum standards of veterinary practice set forth in Section R156-28-503;

(2) ~~permitting [an]unlicensed assistive personnel to perform duties that [person under his supervision to assist or engage in acts or practices in which]the individual is not competent by education, training or experience to perform; and~~

(3) ~~failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Principles of Veterinary Medical Ethics of the American Veterinarian Medical Association (AVMA), as approved by the AVMA Executive Board, July 1999, revised November 2003, which are hereby incorporated by reference, except that if a licensee fails to establish the veterinarian-client-patient relationship as required in Section III A. of those principles, such failure does not excuse the veterinarian from complying with all other duties that would be a part of the duties that would be imposed on a veterinarian if the veterinarian had properly established the veterinarian-client-patient relationship.[permitting an unlicensed person under his supervision to engage in acts or practices included in the definition of the practice of veterinary medicine, surgery, and dentistry without direct supervision or without indirect supervision while carrying out ongoing care for hospitalized patients; and~~

~~(4) permitting an unlicensed person under his supervision to perform surgery, to diagnose or prescribe.]~~

R156-28-503. Minimum Standards of Practice.

In accordance with Subsection 58-28-102(14) and Section 58-28-603, a veterinarian shall comply with the following minimum standards of practice in addition to the generally recognized standards and ethics of the profession:

(1) A veterinarian shall compile and maintain ~~[written]~~records on each patient to minimally include:

(a) client's name, address and phone number, if telephone is available;

(b) patient's identification, such as name, number, tag, species, age and gender, except for herds, flocks or other large groups of animals which may be more generally defined;

(c) veterinarian's diagnosis or evaluation of the patient;

(d) treatments rendered including drugs used and dosages; and

(e) date of service.

(2) ~~[A veterinarian shall make available to each client a statement of charges.~~

~~(3) A veterinarian shall maintain a sanitary environment to avoid sources and transmission of infection to include the proper routine disposal of waste materials and proper sterilization or sanitation of all equipment used in diagnosis and treatment.]~~

~~(4) A veterinarian shall assure a valid veterinarian-client-patient relationship in the use, prescription, or sale of any veterinary prescription drug, or the prescribing of an extra-label use of any drug.~~

~~(5) Medical records including radiographs are the physical property of the hospital or the proprietor of the practice that prepares them.~~

~~(6) The veterinary facility shall have minimum indoor lighting to provide reasonable visibility:~~

~~(a) halls and wards with 20 foot candles;~~

~~(b) reception area with 50 foot candles;~~

~~(c) examining rooms at table elevation with 70 foot candles; and~~

~~(d) surgery table elevation with 150 foot candles.~~

~~(7) The veterinary facility shall have adequate measures for the control of objectionable noises and odors in compliance with applicable health codes and standards of practice.~~

~~(8) The veterinary facility shall contain the following:~~

~~(a) a reception room and office, or a combination of the two;~~

~~(b) an examination room or area that is separate from the other areas of the facility and of sufficient size to accommodate the doctor, assistant, patient and client; and~~

~~(c) a sanitary surgery room or area which is separate and distinct from all other rooms, except in a large animal practice where modifications may be necessary to accommodate large animal surgery.~~

~~(9) The veterinary facility shall have an alternate source of lighting to be used in the event of power failure.~~

~~(10) The veterinary facility shall have appropriate temperature and ventilation to assure the comfort of all patients.~~

~~(11) The veterinary facility shall have an acceptable sanitary system for the disposal of deceased animals.~~

~~(12) In those veterinary facilities where animals are retained for treatment or hospitalization, the following shall be provided:~~

~~(a) separate compartments, one for each animal, maintained in a sanitary manner as to assure comfort, and be of a design and construction so as to facilitate sanitation procedures;~~

~~(b) facilities and efforts allowing for the effective separation of contagious and noncontagious cases;~~

~~(c) exercise areas which provide and allow effective separation of animals and their waste products; and~~

~~(d) adequate fire precautions according to local building and fire codes.~~

~~(13) The following equipment is required in a veterinary practice:~~

~~(a) an adequate means of sterilizing all appropriate equipment;~~

~~(b) autoclave equipment shall be properly utilized in those facilities where major surgery is conducted;~~

~~(c) surgical packs including drapes, gloves, sponges, towels, and adequate instrumentation;~~

~~(d) anesthetic equipment in accordance with the level of surgery performed available at all times; and~~

~~(e) oxygen resuscitating equipment available on the premises at all times.~~

~~(14) The following shall apply to the use of anesthesia:~~

~~(a) preanesthetic examination shall be performed on the patient by the attending veterinarian, unless contraindicated;~~

~~(b) the anesthetized animal shall be under supervision at all times and observed until at least the swallowing reflex has returned; and~~

~~(c) when major surgery is performed, currently recognized anesthesia shall be used.~~

~~(15) Currently recognized procedures for aseptic surgery shall be utilized as follows:~~

~~(a) scrubbing of surgical area with cleansing agent and water, unless contraindicated;~~

~~(b) disinfecting of the surgical area of the patient where practical;~~

~~(c) use of drapes where practical to cover the surgical area of the patient;~~

~~(d) appropriate attire and personal sanitation of surgeons and assistants, where practical; and~~

~~(e) properly prepared and sterilized surgical packs for each surgical procedure.]~~

KEY: veterinary medicine, licensing

Date of Enactment or Last Substantive Amendment: ~~[June 3, 2003]~~2008

Notice of Continuation: February 1, 2007
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-28-101

◆ ————— ◆

Commerce, Occupational and Professional Licensing

R156-37

Utah Controlled Substances Act Rules

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 31423
 FILED: 05/12/2008, 15:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of recent legislation identified below, amendments are being proposed with respect to the Controlled Substance Database. Proposed rule amendments in this rule filing: 1) will require weekly data submissions by pharmacies to the Controlled Substance Database beginning 07/15/2008; 2) implement the real-time pilot program established in H.B. 119 which was passed during the Legislature's 2008 General Session; 3) clarify database access by the Department of Health; 4) clarify the prohibition against individuals requesting an accounting from the Division detailing persons and entities who had requested database information about the individual; and 5) update statute citations regarding Title 63 as a result of H.B. 63 passed during the Legislature's 2008 General Session. (DAR NOTE: H.B. 119 (2008) is found at Chapter 313, Laws of Utah 2008, and will be effective 07/01/2008. H.B. 63 (2008) is found at Chapter 382, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-37-302, updated Title 63 statutory citation. In Subsection R156-37-609(1), amendments are proposed to address necessary changes to the receipt of database information from pharmacies with all of the advancement of technology available for transmission of the required data. In Subsection R156-37-609(4), amendments are proposed to require that data be collected more frequently than in the past and explains how separate entities should comply. Proposed weekly reporting to the Controlled Substance Database will begin 07/15/2008 if the proposed amendments to the rule are made effective. New Sections R156-37-609a and R156-37-609b are being added to identify information that must be submitted to the database manager for implementation of the real-time pilot program and to identify the limitations on the access to real-time database information, those individuals allowed to access the real-time information and the standards and procedures for access to the real-time pilot program. In Subsection R156-37-610(4), amendments are proposed which clarify the prohibition against an individual requesting an accounting from the Division of persons and entities that have received or requested database information about an individual. In Subsection R156-37-610(7), amendments are

proposed to reflect the way in which the Utah Department of Health is to conduct research using the database information and due to the increasing size of the data, a larger secure computer is required.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 58-1-106(1)(a), 58-37-6(1)(a), and 58-37-7.5(7)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division anticipates it will incur minimal costs of approximately \$50 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The Department of Health may incur some costs to ensure the use of a secure database computer system to store electronic data obtained from the Controlled Substance Database. The Division does not know an amount for the secure database computer system and the Department of Health may already have such a system in place.

❖ **LOCAL GOVERNMENTS:** Proposed amendments do not apply to local governments, therefore no costs or savings are anticipated. Proposed amendments only apply to regulated/licensed pharmacies who submit controlled substance prescription data to the Utah Controlled Substance Database and to Department of Health personnel.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The Division anticipates there will be no costs or savings associated with this rule filing to the general public since the proposed rule amendments clarify existing provisions regarding methods of transferring data to the Controlled Substance Database, time frames, and formats for transferring of data, and Database access by the Department of Health. The public is not responsible for submitting information to the Controlled Substance Database. That responsibility lies with the licensed pharmacy who is filling a controlled substance prescription for a member of the general public. The Division anticipates there may be some additional costs to regulated/licensed pharmacies only as a result of these proposed amendments. It should be noted that some of the licensed pharmacies may be considered a "small business". The proposed amendments are increasing the submittal time of prescription data from pharmacies to the Controlled Substance Database from weekly, bi-weekly, or monthly to at least one time per week. Pharmacies may also need to reconfigure data to comply with the proposed amendments. The Division is unable to determine any exact costs to licensed pharmacies due to the diverse nature and size of pharmacies involved ranging from chain size pharmacies to small, locally owned pharmacies. The Division anticipates approximately 510 licensed pharmacies will be impacted by the proposed amendments. It should also be noted that costs for pharmacies who are selected to participate in the real-time pilot program were considered in the passage of H.B. 119.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division anticipates there may be some additional costs to regulated/licensed pharmacies only as a result of these proposed amendments. The proposed amendments are increasing the submittal time of prescription data from

pharmacies to the Controlled Substance Database from weekly, bi-weekly, or monthly to at least one time per week. Pharmacies may also need to reconfigure data to comply with the proposed amendments. The Division is unable to determine any exact costs to licensed pharmacies due to the diverse nature and size of pharmacies involved ranging from chain size pharmacies to small, locally-owned pharmacies. The Division anticipates approximately 510 licensed pharmacies will be impacted by the proposed amendments. It should also be noted that costs for pharmacies who are selected to participate in the real-time pilot program were considered in the passage of H.B. 119.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing clarifies existing provisions regarding methods of transferring data into the Controlled Substance Database, requires weekly data submissions by pharmacies, clarifies provisions regarding Database access by the Department of Health and as required by new legislation, implements a pilot program for real-time transfer of data to the Database. It is anticipated that the weekly and real-time transfer of data could create additional costs for pharmacies. However, that cost is difficult to estimate and may vary among pharmacies. Francine A. Giani, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Diana Baker at the above address, by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at dbaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/24/2008 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: F. David Stanley, Director

R156. Commerce, Occupational and Professional Licensing.

R156-37. Utah Controlled Substances Act Rules.

R156-37-302. Qualifications for Licensure - Application Requirements.

- (1) An applicant for a controlled substance license shall:

(a) submit an application in a form as prescribed by the division; and

(b) shall pay the required fee as established by the division under the provisions of Section ~~[63-38-3-2]~~63J-1-303.

(2) Any person seeking a controlled substance license shall:

(a) be currently licensed by the state in the appropriate professional license classification as listed in R156-37-301 and shall maintain that license classification as current at all times while holding a controlled substance license; or

(b) be engaged in the following activities which require the administration of a controlled substance but do not require licensure under Subsection (a):

(i) animal capture for transport or relocation as an employee or under contract with a state or federal government agency; or

(ii) other activity approved by the Division in collaboration with the appropriate board.

(3) The division and the reviewing board may request from the applicant information which is reasonable and necessary to permit an evaluation of the applicant's:

(a) qualifications to engage in practice with controlled substances; and

(b) the public interest in the issuance of a controlled substance license to the applicant.

(4) To determine if an applicant is qualified for licensure, the division may assign the application to a qualified and appropriate licensing board for review and recommendation to the division with respect to issuance of a license.

R156-37-609. Controlled Substance Database - Procedure and Format for Submission to the Database.

(1) In accordance with Subsections 58-37-7.5(6)(a), the format in which the information required under Section 58-37-7.5 shall be submitted to the administrator of the database is:

(a) electronic data via telephone modem;

(b) electronic data stored on floppy disk or compact disc (CD); ~~[-or]~~

(c) electronic data sent via electronic mail (e-mail) if encrypted and approved by the database manager~~[-]~~;

(d) electronic data sent via a secured internet transfer method, including but not limited to, FTP site transfer and HyperSend; or

(e) any other electronic method preapproved by the database manager.

(2) The required information may be submitted on paper, if the pharmacy or pharmacy group submits a written request to the division and receives prior approval.

(3) The division will consider the following in granting the request:

(a) the pharmacy or pharmacy group has no computerized record keeping system upon which the data can be electronically recorded; or

(b) the pharmacy or pharmacy group is unable to conform its submissions to the format required by the database administrator without incurring undue financial hardship.

(4) ~~[E]As of July 15, 2008, each pharmacy or pharmacy group may submit the data either weekly, bi-weekly, or monthly~~ shall submit all data collected during the preceding seven days at least once per week. If the data is submitted by a single pharmacy entity, the data shall be submitted in chronological order according to the date each prescription was filled. If the data is submitted by a pharmacy group, the data is required to be sorted by individual pharmacy within the group, and the data of each individual

pharmacy within the group is required to be submitted in chronological order according to the date each prescription was filled. [— Any pharmacy which does not declare its intention for timely submission of data will be presumed to have chosen monthly submission.—]

(5) The format for submission to the database shall be in accordance with uniform formatting developed by the American Society for Automation in Pharmacy system (ASAP). The division may approve alternative formats or adjustments to be consistent with database collection instruments and contain all necessary data elements.

(6) The pharmacist-in-charge of each reporting pharmacy shall submit a report on a form approved by the division including:

- (a) the pharmacy name;
- (b) NABP number;
- (c) the period of time covered by each submission of data;
- (d) the number of prescriptions in the submission;
- (e) the submitting pharmacist's signature attesting to the accuracy of the report; and
- (f) the date the submission was prepared.

R156-37-609a. Controlled Substance Database - Reporting Procedure and Format for Submission to the Database for Pharmacies and Pharmacy Groups Selected by the Division for the Real Time Pilot Program.

(1) In accordance with Subsection 58-37-7.8(8), the information required under Section 58-37-7.5 shall be submitted to the Division's database manager by licensees designated by the Division to participate in the real time reporting pilot program in the following format:

- (a) electronic data using the software provided by the Division or software approved by the Division; and
- (b) using the real time data transmission system established by the Division.

(2) Each pharmacy or pharmacy group shall enter and submit data required under Section 58-37-7.5 as soon as the data is available to the pharmacy or pharmacy group.

(3) The format for submission to the database shall be in accordance with the uniform formatting developed by the American Society for Automation in Pharmacy System (ASAP). The Division may approve alternative formats.

(4) The pharmacist-in-charge of each reporting pharmacy or pharmacy group shall be responsible for compliance with this rule.

R156-37-609b. Controlled Substance Database - Limitations on Access to Real Time Database Information - Individuals Allowed to Access - Standards and Procedures for Access to Real Time Pilot Program.

(1) In accordance with Subsection 58-37-7.8(8), access to information contained in the controlled substance database is limited to individuals who are designated by the Division to participate in the real time pilot program, as follows:

- (a) personnel employed by federal, state and local law enforcement agencies;
- (b) pharmacists licensed to dispense controlled substances in Utah;
- (c) practitioners licensed to prescribe controlled substances in Utah; and
- (d) employees of the Department of Health who have previously been approved by the Division to access controlled

substance database information in furtherance of the Pain Medication Management and Education Program.

(2) All individuals who are granted access to information in the controlled substance database via the real time pilot program shall provide any documentation requested by the Division's database manager to confirm the individual's identity. The individual will then be provided a username, password, and PIN number by which the individual will access the information contained in the database. Pursuant to Subsection 58-37-7.5 (9), (10), and (11), it is unlawful for an authorized user to allow another individual to use the authorized user's assigned username, password and PIN number.

(3) Personnel employed by federal, state, and local law enforcement agencies may access only information related to a current investigation involving controlled substances being conducted by that agency.

(4) Pharmacists licensed to dispense controlled substances in Utah may access only information related specifically to a current patient to whom that pharmacist is dispensing or is considering dispensing any controlled substance.

(5) Practitioners licensed to prescribe controlled substances in Utah may access only information related specifically to a current patient of the practitioner, to whom the practitioner is prescribing or is considering prescribing any controlled substance.

(6) Employees of the Department of Health who have been previously approved by the Division to access controlled substance database information in furtherance of the Pain Medication Management and Education Program may access only information in order to conduct scientific studies to evaluate opioid use and opioid-related morbidity and ways to reduce deaths and other harm from improper or risky prescribing and dispensing practices as codified in Section 26-1-36.

R156-37-610. Controlled Substance Database - Limitations on Access to Database Information - Standards and Procedures for Identifying Individuals Requesting Information.

(1) In accordance with Subsections 58-37-7.5(8)(a) and (b), the division director shall designate in writing those individuals within the division who shall have access to the information in the database.

(2) Personnel from federal, state or local law enforcement agencies may obtain information from the database if the information relates to a current investigation being conducted by such agency. The manager of the database may also provide information from the database to such agencies on his own volition when the information may reasonably constitute a basis for investigation relative to violation of state or federal law.

(3) In accordance with Subsections 58-37-7.5(5)(c), (6)(b), (7)(b), and (8)(d) and (e), the database manager may provide information from the database to licensed practitioners having authority to prescribe controlled substances and to licensed pharmacists having authority to dispense controlled substances. The database manager may provide the information on his own volition to accomplish the stated purposes set forth in Subsection 58-37-7.5(5).

(4) Any individual may request information in the database relating to that individual's ~~receipt of~~ controlled substances receipt history. An individuals may not request or receive an accounting of persons or entities that have requested or received information about the individual. Upon request for database information on an individual who is the recipient of a controlled substance prescription entered in the database, the manager of the database shall make

available database information exclusively relating to that particular individual's controlled substance receipt history under the following limitations and conditions:

(a) The requestor seeking database information personally appears before the manager of the database, or a designee, with picture identification confirming his identity as the same person on whom database information is sought.

(b) The requestor seeking database information submits a signed and notarized request executed under the penalty of perjury verifying his identity as the same person on whom database information is sought, and providing their full name, home and business address, date of birth, and social security number.

(c) The requestor seeking database information presents a power of attorney over the person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the grantor of the power of attorney is the same person on whom database information is sought, including the grantor's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the person holding the power of attorney.

(d) The requestor seeking database information presents verification that he is the legal guardian of an incapacitated person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the incapacitated ward of the guardian is the same person on whom database information is sought, including the ward's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the legal guardian of the incapacitated person.

(e) The requestor seeking database information shall present a release-of-records statement from the person on whom database information is sought and further complies with the following:

(i) submits a verification from the person on whom database information is sought consistent with the requirements set forth in paragraph (4)(b);

(ii) submits a signed and notarized release of records statement executed by the person on whom database information is sought authorizing the manager of the database to release the relevant database information to the requestor; and

(iii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the requestor identified in the release of records;

(5) Before data is released upon oral request, a written request may be required and received.

(6) Database information may be disseminated either orally, by facsimile or by U.S. mail.

(7) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator must:

(a) show the research is an approved project of the Utah Department of Health;

(b) provide a description of the research to be conducted[;] including a research protocol[s] for the project and a description of the data [~~needs~~needed] from the Database to conduct that research;

(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access only permitted by the scientific investigator;

(d) provide for electronic data to be stored on a [~~stand alone~~]secure database computer system with access only allowed by the scientific investigator; and

(e) pay all relevant expenses for data transfer and manipulation.

KEY: controlled substances, licensing

Date of Enactment or Last Substantive Amendment: [~~October 22, 2007~~]2008

Notice of Continuation: March 15, 2007

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-37-6(1)(a); 58-37-7.5(7)



Commerce, Occupational and Professional Licensing **R156-41** Speech-Language Pathology and Audiology Licensing Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31397

FILED: 05/08/2008, 09:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Speech-Language Pathology and Audiology Board completed a review of this rule and identified changes that needed to be made as a result of other recent Division rule changes regarding supervision definitions and a statute that has been repealed.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule the term "rules" has been replaced with "rule". In Subsection R156-41-102(2), an amendment is proposed to update the definition of direct supervision. In Subsection R156-28-601(1), an amendment is proposed to delete the option of registration as a health care assistant since Title 58, Chapter 62, was repealed in 2002.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-41-1 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division anticipates it will incur minimal costs of approximately \$50 to reprint the rule once the

proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed rule amendments do not apply to local governments. These proposed rule amendments only apply to applicants for licensure as a speech-language pathologist or audiologist and to licensed speech-language pathologists and audiologists.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: These proposed rule amendments only apply to applicants for licensure as a speech-language pathologist or audiologist and to licensed speech-language pathologists and audiologists. It should be noted that licensees in these license classifications could qualify as a "small business" depending on their employment location. The Division anticipates there should be no costs or savings to the above-identified groups as a result of these proposed amendments since the amendments are only technical in nature and do not require any additional requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These proposed rule amendments only apply to applicants for licensure as a speech-language pathologist or audiologist and to licensed speech-language pathologists and audiologists. The Division anticipates there should be no costs or savings to the above-identified groups as a result of these proposed amendments since the amendments are only technical in nature and do not require any additional requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated with this rule filing which clarifies and updates the rule to comport with applicable law. Francine A. Giani, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: F. David Stanley, Director

R156. Commerce, Occupational and Professional Licensing. **R156-41. Speech-Language Pathology and Audiology Licensing Act Rule[s].**

R156-41-101. Title.

Th[ese]is rule[s-are] is known as the "Speech-Language Pathology and Audiology Licensing Act Rule[s]".

R156-41-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 41, as used in Title 58, Chapters 1 and 41, or th[ese]is rule[s]:

(1) "Audio electronic equipment" as used in Subsection 58-41-2(3) means equipment proven in use, accepted and standard to the profession, of known quality and function, well maintained, in current calibration and presenting no hazard to the operator or client.

(2) "Direct supervision" as used in Subsections 58-41-2(5)(c), 58-41-2(20)(c), and th[ese]is rule[s], means supervision as defined in Subsection R156-1-102a(4)(a)~~requiring the supervisor or substitute supervisor to be physically present in the same facility where an action is performed by the aide. The supervisor is to provide face to face observation and evaluation of the aide at least 25% of the time. The supervisor or substitute supervisor shall be available for immediate consultation at all times when the aide is engaged with a patient~~.

(3) "Evoked potentials evaluation", as used in Subsection 58-41-2(4), includes neurophysiological intraoperative monitoring.

(4) "Professional training" as set forth in Subsection 58-41-12(2) means continuing professional education that meets the standards set forth in Section R156-41-304.

(5) "Substitute supervisor", as used in th[ese]is rule[s], means a licensee who is designated by the supervisor to provide limited supervision to an aide. The substitute supervisor shall be licensed in the same discipline in which the aide is functioning.

(6) "Supervision", as used in th[ese]is rule[s], means a supervisor-supervisee relationship requiring the supervisor to be responsible for the professional performance by the supervisee. This includes a substitute supervisor-supervisee relationship.

(7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 41, is further defined, in accordance with Subsection 58-1-203(~~5~~)(e), in Section R156-41-502.

R156-41-103. Authority - Purpose.

Th[ese]is rule[s-are] is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 41.

R156-41-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 41, is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308a.

R156-41-601. Speech-Language Pathology and Audiology Aides.

(1) In accordance with Subsections 58-41-2(5) and (20), an individual licensed to engage in practice as a speech-language pathologist or audiologist may employ as an aide an individual who has ~~completed or obtained the following:~~

~~(a) graduation~~ graduated from an accredited high school or obtained a certificate of equivalency approved by the division~~;~~ and

— (b) registration as a health care assistant in accordance with Title 58, Chapter 62].

(2) A licensee supervising an aide shall be responsible for the direct supervision of an aide.

(3) A licensee supervising an aide must have a current written utilization plan outlining the specific manner in which the aide will be employed and the manner in which the aide will be supervised.

(4) A licensee shall be permitted to supervise not more than three aides at any one time.

(5) An aide shall not engage in the following:

(a) preparing diagnostic statements or clinical management plans, strategies or procedures;

(b) communicating obtained observations or results to anyone other than the aide's supervising speech-language pathologist or audiologist;

(c) determining case selection;

(d) independently composing or signing clinical reports; except an aide may enter progress notes into the patient's file reflecting the results of the aide's assigned duties;

(e) independently diagnosing, treating, discharging of patient, or advising of patient disposition; and

(f) referral of a patient to other professionals or agencies.

(6) Upon the request of the division, a licensee who employs an aide must provide documentation that the aide has met the qualifications as listed in Subsection (1), and that the aide is functioning under a utilization plan.

KEY: licensing, speech-language pathology, audiology

Date of Enactment or Last Substantive Amendment: ~~October 18, 2005~~ 2008

Notice of Continuation: February 1, 2007

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-41-1



Education, Administration **R277-109** One-time Signing Bonuses

NOTICE OF PROPOSED RULE (New Rule)

DAR FILE NO.: 31439
FILED: 05/15/2008, 15:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish definitions and procedures for the implementation of one-time signing bonuses for new educators consistent with S.B. 281, 2008 Legislative General Session. (DAR NOTE: S.B. 281 (2008) is found at Chapter 289, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: This new rule provides definitions, responsibilities of qualifying educators, responsibilities of public school districts and charter schools, and responsibilities of the State Board of Education to implement the bonuses.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 53A-1-401(3) and 53A-17a-153(6)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The 2008 Legislature appropriated monies to cover the costs of bonuses. The bonus program will be developed and implemented by the Utah State Office of Education at no additional cost to the state.

❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. School districts and charter schools will receive funding for signing bonuses.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There are no anticipated costs to small businesses and persons other than businesses. This funding simply provides a monetary incentive to individuals wishing to teaching in Utah public schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Educators will receive signing bonuses consistent with the the 2008 legislative appropriation at no additional cost to individual teachers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration. R277-109. One-time Signing Bonuses. R277-109-1. Definitions.

A. "90 days" means 90 calendar days beginning with the first educator work day.

B. "Board" means the Utah State Board of Education.

C. "Did not work as an educator" means did not work under contract in a position requiring an educator license during the 2007-08 school year.

D. "Qualifying educator" means a person employed:

(1) in one of the following positions:

(a) classroom teacher;

(b) speech pathologist;

(c) librarian or media specialist;

(d) preschool teacher;

(e) mentor teacher;

(f) teacher specialist or teacher leader;

(g) guidance counselor;

(h) audiologist;

(i) psychologist; or

(j) social worker.

(2) who holds a current and valid Level 1, 2, or 3 Utah Educator License or is a participant in the Utah Alternative Routes to Licensure Program consistent with R277-503.

E. "USOE" means the Utah State Office of Education.

R277-109-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-153(6) which permits the Board to make rules as necessary to administer the program.

B. The purpose of this rule is to establish definitions and procedures for the implementation of 2008-09 one-time signing bonuses.

R277-109-3. Qualifying Educator Responsibilities.

A. Each qualifying educator shall sign an affidavit affirming eligibility for the signing bonus.

B. An educator who receives funds fraudulently or mistakenly shall be responsible for reimbursing funds to school districts or charter schools.

C. Qualifying educators acknowledge that if total signing bonus funds are reduced, funds may be reclaimed from qualifying educators in subsequent school district and charter school salary payments.

R277-109-4. Public School District and Charter School Responsibilities.

A. School districts and charter schools shall submit the names of qualifying educators who are hired and who begin work prior to September 1, 2008 to the Board on December 1, 2008.

B. School districts or charter schools shall submit the names of qualifying educators who are hired and begin work after September 2, 2008 but before October 1, 2008 to the Board on or after January 2, 2009.

C. Additional names may not be submitted to the Board for program participation by school districts or charter schools after January 15, 2009.

D. The submission of qualifying educators to the Board shall include the following information:

(1) qualifying educator name;

(2) qualifying educator CACTUS number; and

(3) percentage of full time equivalent employment (FTE), such as 1.0 FTE, .50 FTE, for each qualifying educator.

E. School districts and charter schools shall not receive funding for an individual who:

(1) is hired and whose first work day was on or after October 1, 2008;

(2) was employed and worked as an educator in any Utah public school district or charter school during the 2007-08 school year;

(3) works less than 90 days during the 2008-09 school year; or

(4) is employed less than one-half time.

F. School districts and charter schools may combine the signing bonus under Section 53A-17a-148 with other state or local signing bonus programs for the 2008-09 school year.

G. School districts and charter schools shall provide payment of the salary supplement to qualifying educators as follows:

(1) School districts and charter schools shall pay a signing bonus under this program consistent with bonuses set by the Board;

(2) School districts and charter schools shall make the signing bonus payment to qualifying educators in any regular or other salary distribution prior to January 15, 2009;

(3) School districts and charter schools shall use program funds to pay the required employer contributions to retirement, workers compensation, Social Security, and Medicare as provided in Section 53A-17a-148(3)(a);

(4) If the amount of the signing bonus program funds distributed to school districts and charter schools is reduced consistent with the allowance for pro rata reduction under Section 53A-17a-148(4)(b), school districts and charter schools may make adjustments to payroll distributions to qualifying educators so that the total signing bonus amount paid to individual qualifying educators does not exceed the actual amount school districts and charter schools received from the Board.

H. All school districts and charter schools shall participate in the 2008-09 signing bonus program.

I. School districts shall maintain qualifying educator affidavits on file for USOE or legislative review upon request.

R277-109-5. Board Responsibilities.

A. The Board shall provide a form to school districts and charter schools for the required submissions for participation in this program.

B. Signing bonus amount:

(1) The signing bonus paid to the qualifying educator is \$1,000 unless the amount is reduced consistent with Section 53A-17a-148(4).

(2) School districts and charter schools shall receive funds beyond the \$1,000 signing bonus to pay employer costs required under Section 53A-17a-148(3)(a).

(3) All qualifying educators hired under this program shall receive the same \$1,000 signing bonus.

C. Upon receiving the submissions of qualifying educator names, the Board shall review the information to ensure conformity to the requirements for bonuses and payments.

D. The Board shall distribute funds to school districts and charter schools after reviewing required submissions.

E. The distribution of funds shall be included in the regular minimum school program transfers in December and February.

F. The Board shall provide a report to school districts and charter schools of the number of qualifying educators submitted after the December 1 and January 2 submissions.

KEY: one-time signing bonuses
Date of Enactment or Last Substantive Amendment: 2008
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-17a-153(6)



Education, Administration
R277-113
 One-time Performance-based
 Compensation Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 31440

FILED: 05/15/2008, 15:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide criteria for school district and charter school participation in the Performance-based Compensation Program and to provide for distribution of funds to eligible participants consistent with S.B. 281, 2008 Legislative General Session. (DAR NOTE: S.B. 281 (2008) is found at Chapter 289, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: This new rule provides definitions, responsibilities for school districts and charter schools, and responsibilities for the State Board of Education.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53A-1-401(3) and 53A-17a-148(6)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The 2008 Legislature appropriated monies to cover the costs of the program. There will be no additional cost to the state for distribution of funds to school districts and charter schools by the Utah State Office of Education.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. School districts and charter schools who participate in the program will receive funding for implementation.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses and persons other than businesses. Funding for participation in this program has been appropriated by the Legislature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Funding is provided to public school districts and charter schools choosing to participate in the program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-113. One-time Performance-based Compensation Program.

R277-113-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Employee" means an individual receiving compensation from a qualifying education entity, not including short term substitute employees or volunteers.

C. "Qualifying education entity" means a school district or charter school that has met all of the requirements of this rule, including timely submission of the required performance-based compensation plan to the Board.

R277-113-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-148(6) which permits the Board to make rules as necessary to administer the program.

B. The purpose of this rule is to provide criteria for school district and charter school participation in the Performance-based Compensation Program and for distribution of funds to eligible participants.

R277-113-3. School District and Charter School Responsibilities.

A. School districts and charter schools that elect to participate in the one-time performance-based compensation program shall submit performance-based compensation plans to the Board. Plans of qualifying education entities shall include all the elements required under Section 53A-17a-148(5)(b)(ii).

B. The plan applies to the 2008-09 school year only.

C. Plans shall provide for distribution of performance-based compensation only for employee performance during the 2008-09 school year.

D. School districts and charter schools are encouraged to include additional elements in submitted plans such as:

- (1) measures of student academic progress or growth;
- (2) specific measures of instructional quality;
- (3) measures of quality or efficiency in education support functions;
- (4) measures of parent and student satisfaction;
- (5) measures of school and school district progress; and
- (6) other measures that demonstrate improved academic, instructional, or education support performance.

E. School districts and charter schools are encouraged to include employees, employee association representatives, parents, and others in the development of performance-based compensation plans.

F. Local school boards and charter school governing boards shall review and approve performance-based plans prior to the submission of plans to the Board.

G. Participating school districts and charter schools shall provide reports related to this program as requested by the Board and shall provide summary evaluations of the plans including the plans' effectiveness by July 1, 2009.

H. Participating school districts and charter schools shall submit plans to the USOE prior to July 1, 2008.

R277-113-4. Board Responsibilities.

A. The Board shall approve plans that include the elements required under Section 53A-17a-148(5)(b)(ii).

B. The Board shall immediately notify any school district or charter school that submits a plan that is deemed deficient or ineligible or both and may allow for resubmission of plans before July 1, 2008.

C. Plans shall be sent to the Education Interim Committee for review on or before August 1, 2008.

D. Funds shall be distributed to participating school districts and charter schools on a per-pupil basis in a one-time transfer prior to December 1, 2008.

E. The Board shall collect information from participating school districts and charter schools as needed to enable a complete and accurate report to the Legislature as required, including an assessment of the effectiveness of school district and charter school plans.

KEY: performance-based compensation program
Date of Enactment or Last Substantive Amendment: 2008
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-17a-148(6)



Education, Administration
R277-471
 Oversight of School Inspections

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 31441
 FILED: 05/15/2008, 15:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for stronger and more specific monitoring and penalties for school districts and charter schools that fail to meet filing deadlines of construction inspection reports due to the Utah State Office of Education and to local municipal and county building officials. The amended rule also provides for an appeals procedure for school district and charter schools if fines are assessed.

SUMMARY OF THE RULE OR CHANGE: This amended rule provides for stronger and more specific enforcement provisions for school districts and charter schools that fail to meet filing deadlines of school construction inspection reports to the Utah State Office of Education and to local municipal and county building officials. The amended rule also provides for an appeals procedure for school districts and charter schools that are fined.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The enforcement provisions provide monetary consequences to school districts and charter schools. The procedures will be carried out by the Utah State Office of Education at no additional cost to the state.
- ❖ **LOCAL GOVERNMENTS:** There may be costs to some school districts and charter schools that fail to submit construction inspection reports by required deadlines. Costs are too speculative to predict at this time.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There are no anticipated costs or savings to small businesses and persons other than businesses. The amendments to the rule involve public school districts and charter schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be compliance costs in the form of fines to school districts and charter schools who fail to submit school construction inspection reports by required deadlines. Costs are too speculative to predict at this time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-471. Oversight of School Inspections.

R277-471-9. Enforcement.

A. School districts and charter schools which fail to comply with the provisions of this rule are subject to interruption of state aid dollars by the Board in accordance with Section 53A-1-401(3) and 53A-17a-144(4)(d).

(1) If a school district or charter school fails to meet or satisfy a school construction inspection requirement or timeline designation under this rule, the school district superintendent or local charter school director shall receive notice by certified mail; and

(2) If after 30 days the requirement has not been met, the USOE shall interrupt the Minimum School Program fund transfer process to the following extent:

(a) 10 percent of the total monthly Minimum School Program transfer amount the first month;

(b) 25 percent in the second month; and

(c) 50 percent in the third and subsequent months.

B. If the USOE interrupted the Minimum School Program fund transfer process, the USOE shall:

(1) upon receipt of confirmation that the proper inspection(s) has (have) taken place or upon receipt of a late report, restart the transfer process within the month (if the confirmation or report is submitted before the tenth working day of the month) or in the following month (if the confirmation or report is submitted after 10:00 a.m. on or after the tenth working day of the month); and

(2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting; and

(3) inform the chair of the local governing board if the school district superintendent or charter school director is not responsive in correcting ongoing school construction inspection and reporting problems.

C. A nonrefundable fine in the amount of one half of one percent of the total construction costs shall be assessed school districts and charter schools that fail to report new or remodeling projects to USOE that exceed \$99,999 before construction begins.

(1) Nonrefundable fine amounts shall be deducted from the respective school district's and charter school's Minimum School Program allotment at a rate sufficient to complete collection of the nonrefundable fine by the end of the current fiscal year.

(a) School district nonrefundable fine amounts collected by USOE shall be deposited into the School Building Revolving Account; and

(b) charter school nonrefundable fine amounts collected by USOE shall be deposited into the Charter School Building Subaccount within the School Building Revolving Account.

[B]D. Violation of any land use regulation and the substantive provisions of all Codes is a class C misdemeanor and may be subject to further civil penalties, as established by local ordinance.

R277-471-10. Appeals Procedure for Nonrefundable Fines.

A. School districts or local charter school boards may appeal a fine assessed under R277-471-9C consistent with the following:

(1) A fine may not be appealed until a final administrative decision has been made to assess the fine by the USOE and the fine has been affirmed by the Board.

(2) A district superintendent on behalf of a local school board or a local charter board chair on behalf of a local charter school board may appeal an assessed fine by filing an appeal form provided on the USOE website.

(3) The appeal must be filed within 10 business days of final affirmation of USOE action/withholding by the Board.

(4) The appeal shall be delivered or provided electronically to the USOE as provided by the appeal form.

(5) The appeal form shall require an explanation of unanticipated or compelling circumstances that resulted in local board's or charter school's failure to report new construction or remodeling projects that exceed \$99,999.

(6) The appeal form shall require a notarized statement from the district superintendent or local charter board chair that the information and explanation of circumstances are true and factual statements.

(7) At least three members of the Finance Committee appointed by the Board shall act as a review committee to review the written appeal.

(a) The appeal committee may request additional information from the local school board/local charter board.

(b) The appeal committee may ask the district superintendent or local school district or charter school board chair or school district/charter school business staff to appear personally and provide information.

(c) The fine shall be presumed appropriate and legitimate when reviewed by the appeal committee.

(d) The appeal committee shall make a written recommendation within 10 business days of receipt of the appeal request.

(e) The full Finance Committee of the Board shall review the recommendation.

(f) The Finance Committee shall make a formal recommendation to the Board to accept, modify or reject the appeal explanation and fine.

B. The Board, in a regular monthly meeting, may accept or reject the Finance Committee's final recommendation to affirm the fine, modify the fine, or grant the appeal.

C. Consistent with the Board's general control and supervision of the Utah public school system and given the significant public policy concern for safe schools and cost-effective public school building projects, a local board of education or a local charter board has no further appeal opportunity.

KEY: educational facilities

Date of Enactment or Last Substantive Amendment: ~~December 23, 2006~~ 2008

Notice of Continuation: November 1, 2004

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-20-104; 53A-20-104.5; 10-9-106; 17-27-105; 53A-17a-144(4)(d)

◆ ————— ◆

Education, Administration
R277-488
 Critical Languages Pilot Program

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE No.: 31442
 FILED: 05/15/2008, 15:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for a pilot program for 20 high schools in the critical needs languages of Mandarin Chinese and Arabic consistent with S.B. 41, 2008 Legislative General Session. (DAR NOTE: S.B. 41 (2008) is found at Chapter 235, Laws of Utah 2008, and will be effective 07/01/2008.)

SUMMARY OF THE RULE OR CHANGE: The amended rule provides new definitions; changes to the critical language program requirements; adds a new section on dual language immersion pilot program requirements; and updates the Utah State Office of Education responsibilities and funds and evaluation and reports.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-15-104 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Funding was provided by the 2008 Legislature for this program. The Utah State Office of Education will organize and implement the various programs at no cost to the state.
- ❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. Participating schools will receive funding specifically designated by the 2008 Legislature for this program.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses and persons other than businesses. Funding is provided to public schools for participation in the program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The 2008 Legislature provided funding specifically for this program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-488. Critical Languages ~~Pilot~~ Program.

R277-488-1. Definitions.

A. "ACTFL OPI" means the American Council of Teachers of Foreign Language Oral Proficiency Interview which is a test, both written and verbal, offered at most Utah colleges and universities.

B. "Board" means the Utah State Board of Education.

[C]. "Credentialed international teacher" means a teacher sponsored under a separate Memoranda of Understanding between the USOE and China, Spain or Mexico. The Memoranda of Understanding are hereby incorporated by reference. Sponsored teachers shall satisfy all conditions of the Memoranda of Understanding prior to working with Utah students.

[D]. "Critical language" means those languages described under Section 53A-15-104(1).

[E]. "Critical language program" means the enhanced EDNET program and the international teacher exchange program as defined and funded under Section 53A-15-104.

F. "Dual language immersion" means a distinctive dual language education program in which native English speakers and active speakers of another language are integrated for academic content.

G. Dual language immersion instructional models are:

(1) "One-way" immersion is a program in which a student population consists of English language speakers with limited to no proficiency in the foreign immersion language. In such a model, less than 30 percent of the students have a native language other than English.

(2) "Two-way" immersion is a program in which a student population consists of a majority of English language speakers and a minority of language speakers other than English with dominance in their first language and home language support for this language. A 1:1 ratio is ideally maintained for these two language groups, but a minimum of one-third of each language group (such as 2:1 ratio) is required.

[H]. "EDNET" means the state's two-way interactive system for video and audio, delivered and available to students in the state's public education system, as defined under Section 53A-15-104(2).

[I]. "Electronic High School" means the state's electronic high school program explained in Section 53A-17a-131.15 and R277-725.

[J]. "Foreign exchange student" means a student sponsored by an agency approved by the school district's local school board or charter school's governing board, subject to the limitations of Section 53A-2-206(2).

[H]K. "Language facilitator" means a paraprofessional or licensed educator who is fluent in the critical language being taught by EDNET and who is designated to participate in the Critical Languages [Pilot]Program established under Section 53A-15-104.

L. "Secondary school" means grades 7-12 in whatever schools the grade levels exist.

[F]M. "USOE" means the Utah State Office of Education.

R277-488-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-15-104 which directs the State Superintendent of Public Instruction and the Board to establish, administer, and ~~track a~~ expand the Critical Languages [Pilot]Program and authorizes ~~a pilot program~~ the creation of a Dual Language Immersion Pilot Program, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish criteria and procedures for distributing funds to ~~high~~ secondary schools participating in the Critical Languages [Pilot]Program and funds to elementary schools participating in the Dual Language Pilot Program. The intent of this appropriation is to increase the number of students who reach proficiency in a critical language as well as build overall foreign language capacity in the state of Utah and to increase the number of biliterate and bilingual students.

R277-488-3. Critical Language Program Requirements.

A. A ~~high~~ secondary school that desires to participate in the Critical Languages [Pilot]Program (enhanced EDNET, ~~or international teacher exchange~~ traditional instruction or visiting guest teacher program) shall submit an application, provided by the USOE and available each ~~April 15 to the USOE by May 15~~ March 14 to the USOE no later than April 14.

B. The application shall ~~provide~~ designate:

(1) ~~a n-identified,~~ specific available classroom within the school district or charter school ~~where~~ for EDNET ~~can be~~ accessed, traditional instruction or ~~an~~ instruction by identified credentialed ~~international~~ visiting guest teacher teaching under a USOE/foreign country Memorandum of Understanding;

(2) a plan and procedure in place to notify students and parents of the availability of at least one critical language course identified in Section 53A-15-104(1);

(3) for schools using enhanced EDNET delivery, a qualified language facilitator hired and available to students who:

(a) is fluent in the critical language being taught;

(b) has established his fluency by receiving a score of intermediate high or higher on an ACTFL OPI test or USOE-approved equivalent;

(c) is qualified as a paraprofessional under R277-524; or

(d) is a Utah licensed educator; and

(e) has completed a criminal background check including review of identified offenses by the school district or charter school.

(4) requirements for the ~~international~~ visiting guest teacher exchange program:

(a) programs shall operate under a Memorandum of Understanding;

(b) international teacher expenses shall be paid as provided by the designated Memorandum of Understanding;

(c) all other conditions provided by individual Memoranda of Understanding shall be satisfied.

C. Schools applying for ~~both~~ either the enhanced EDNET, ~~and the international~~ traditional instruction or the visiting guest teacher program shall provide identified materials, including texts and consumables, purchased with funds appropriated by the Legislature.

R277-488-4. Dual Language Immersion Pilot Program Requirements.

A. The program shall provide funding for a planning year in 2008-09 with classes to begin in 2009-10.

B. The program shall provide funds beginning July 1, 2008 as an incentive to 15 qualifying schools to develop dual language programs for the following languages:

(1) Chinese (6);

(2) Spanish (6);

(3) French (2);

(4) Navajo (1).

C. An elementary school that desires to participate in the Dual Language Immersion Pilot Program (either one-way or two-way) shall submit an application, provided by the USOE and available by April 14 to the USOE by May 14.

D. Schools/school districts may request funding for no more than two additional pilot sites.

E. The application shall provide for an immersion model that uses 50 percent of instruction in English and 50 percent of instruction in another language including:

(1) an identified, instructional model (one-way or two-way), and language choice (Chinese, Spanish, French, or Navajo);

(2) beginning the instructional model in kindergarten, grade 1 or both, and adding an additional grade each year; and

(3) a plan and procedure in place to notify students and parents of the availability of at least one dual language immersion course identified in Section 53A-15-104(1).

F. Priority in funding shall be given to schools in school districts or charter schools that do not currently teach the requested language choice; and

(a) demonstrate adequate local funding and infrastructure to begin a pilot program or expand existing programs;

(b) demonstrate community interest and students committed and prepared to participate in a new or expanded pilot program, including prepared instructors for the program;

(c) have adequate interest, resources, and infrastructure, but do not presently have a program under R277-488;

(d) have a demonstrated community need for improved or expanded foreign language instruction in a specific school or community; and

(e) allow pilot language programs to include all languages identified in Section 53A-15-105.

G. Schools shall hire qualified language teachers for students who:

(1) have a world language endorsement in the language of instruction (Chinese, Spanish, French or Navajo) for a one-way dual language immersion program or a bilingual endorsement in the language of instruction (Chinese, Spanish, French or Navajo) for a two-way dual language immersion program;

(2) are Utah licensed elementary educators; and

(3) have completed a criminal background check, including review of identified offenses by the USOE.

R277-488-[4]5. USOE Responsibilities and Funds.

A. Applications for the expanded Critical Languages Program and Dual Immersion Pilot Program shall be provided by the USOE.

B. [~~High~~] secondary and elementary schools shall be selected for funding for both programs based on an evaluation of applications by a USOE-designated committee which shall include statewide experts.

C. Awards shall be made to individual [~~high~~] secondary or elementary schools and funds allocated to school districts and charter schools to be fully distributed to designated [~~high~~] schools.

D. Each [~~high~~] secondary school selected for funding shall receive a base allocation per critical language offered at the [~~high~~] school, designated in Section 53A-15-104(6)(a).

E. Each elementary school selected for funding shall receive a base allocation per dual language immersion offered at the elementary school, designated in Section 53A-15-104(6)(a).

[~~E~~]F. Each [~~high~~] secondary school selected for funding shall receive a supplemental allocation designated in Section 53A-15-104(6)(b).

(1) School districts and charter schools approved for participation under this rule shall receive funds for students who complete a critical language course with a grade of C or better by June 15;

(2) [~~High~~] Secondary schools shall receive additional funding for foreign exchange students enrolled in a high school who complete a critical language course, as designated in Section 53A-15-104(6)(c) and consistent with R277-612.

[~~F~~]G. Based on available funds, [~~high~~] secondary and elementary schools shall receive six years of ongoing funding.

[~~G~~]H. Schools eligible for funding shall be notified by the USOE by June 1[, ~~2007~~] annually.

R277-488-[5]6. Evaluation and Reports.

A. Each [~~high~~] secondary or elementary school selected for funding shall be required to submit an annual evaluation report to the USOE consistent with Section 53A-15-104 [~~and, if applicable, the requirements of the international teacher exchange program covered by the Memorandum of Understanding~~].

B. The USOE may request additional data from [~~high~~] secondary or elementary schools that receive funding.

KEY: critical languages, dual language immersion

Date of Enactment or Last Substantive Amendment: [July 9, 2007]2008

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-15-104; 53A-1-401(3)



Education, Administration

R277-490

Beverley Taylor Sorenson Elementary
Arts Learning Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 31443

FILED: 05/15/2008, 15:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to implement the Beverley Taylor Sorenson Elementary Arts Learning Program model provided for in S.B. 2, 2008 Legislative General Session. The program will be implemented in public schools that apply to hire highly-qualified, full-time arts specialists. Additionally, the rule provides for: 1) distribution of funds to arts specialists for supplies and equipment; 2) hiring of arts coordinators; 3) establishment of partnerships to provide pre-service training, professional development, and research and leadership for arts educators and arts education in Utah public schools; and 4) researching, monitoring, evaluating, and reporting program results. (DAR NOTE: S.B. 2 (2008) is found at Chapter 397, Laws of Utah 2008, and was effective 03/20/2008.)

SUMMARY OF THE RULE OR CHANGE: This new rule provides: definitions; criteria for an arts specialist grant program; criteria for distribution of funds for arts specialist supplies; criteria for school district/charter schools/consortia employment of arts coordinators; criteria for pre-service partnerships, professional development, research and leadership training; and for required program evaluation and reporting.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Section 53A-17a-162

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Funding was provided by the 2008 Legislature for implementation of the program. The Utah State Office of Education will work with the Utah Arts Council to implement the program at no additional cost to the state.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. Participating school districts/charter schools will receive funding specifically appropriated by the 2008 Legislature for implementation of this program.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses and other persons other than businesses. Funding is provided for participants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Funding has been provided for participating school districts/charter schools.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program.

R277-490-1. Definitions.

A. "Arts equipment and supplies" means musical instruments, recording and play-back devices, cameras, projectors, computers to be used in the program, CDs, DVDs, teacher reference books, and art-making supplies. This list is not exhaustive.

B. "Arts program coordinators (coordinator)" means individuals, employed full-time, who are responsible to coordinate arts programs for the school district, charter school or consortium, inform arts teachers, organize arts professional development (including organizing arts local learning communities), oversee/guide/organize the gathering of assessment data, represent the school district, charter school or consortium arts program, and provide general leadership for arts education throughout the school district, charter school or consortium.

C. Beverley Taylor Sorenson Elementary Arts Learning Program model means a program with the following components:

(1) a qualified arts specialist to work side-by-side with the regular classroom teacher minimally once per week to deliver quality, sequential, and developmental arts instruction in alignment with the state Fine Arts Core Curriculum; and

(2) weekly collaboration between the regular classroom teacher and arts specialist in planning arts integrated instruction, with regular 15-30 minute conferences.

D. "Board" means the Utah State Board of Education.

E. "Full-time employee," for purposes of this rule, means an employee that works a schedule consistent with the full-time contract agreement of the school or school district, including evaluations and entitlement to employment benefits.

F. "Highly qualified school arts program specialist (arts specialist)" means:

(1) an educator with a current educator license and a Level 2 or K-12 specialist endorsement in the art form; or

(2) an elementary classroom teacher with a current educator license who is currently enrolled in a Level 2 specialist endorsement program in the art form and who works with a mentor who holds an arts endorsement; or

(3) a professional artist employed by a public school and accepted into the Board Alternative Routes to License (ARL) program under R277-503 to complete a K-12 endorsement in the art form, which includes the Praxis exam in the case of art, music, or theatre.

(4) In addition to required licensure and endorsements, prospective teachers should provide evidence of facilitating elementary Core learning in at least one art form.

G. "Independent evaluator," for purposes of this rule and program, means an evaluator selected jointly by the Board and the Utah Arts Council through the required procurement process. The evaluator shall have experience and expertise in education programs and in the arts.

H. "Matching funds," for purposes of this rule and program, means funds that equal the total grant amount received by a school district/charter school/consortium to fund a school district/charter school/consortium arts coordinator under Section 53A-17a-162(3)(c) and R277-490-5.

I. "Utah Arts Council" is a state and nationally funded government entity that assists with professional development and provides direct matching grants to nonprofit organizations across the state of Utah. The Utah Arts Council also conducts programs which provide outreach services (including financial assistance) to schools, local arts councils and organizations, community centers, performing groups, and individual artists.

R277-490-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-162 which directs the Board to establish a grant program for school districts and charter schools to hire qualified, full-time arts professionals to encourage student participation in the arts in Utah public schools and embrace student learning in Core subject areas.

B. The purpose of this rule is:

(1) to implement the Beverley Taylor Sorenson Elementary Arts Learning Program model in public schools through school districts, charter schools and consortia that submit grants to hire highly qualified, full-time arts specialists;

(2) to distribute funds to arts specialists through school districts and charter schools to purchase supplies and equipment;

(3) to allow ten Utah school districts/consortia to hire arts coordinators;

(4) to establish partnerships within established networks with Utah higher education institutions to provide pre-service training, professional development, research and leadership for arts educators and arts education in Utah public schools; and

(5) appropriately monitor, evaluate and report programs and program results.

R277-490-3. Arts Specialist Grant Program.

A. School districts/charter schools or consortia of school districts or charter schools may submit grant requests consistent with time lines provided in this rule.

B. School district/charter school consortia:

(1) School districts/charter schools may form consortia to employ arts specialists if the combined total student number of the consortium is not less than 300 students.

(2) The school district/charter school shall develop its proposal consistent with the Beverley Taylor Sorenson Elementary Arts Learning Program model outlined under R277-490-1C.

(3) The school district/charter school grant shall explain the necessity or greater efficiency and benefit of an arts specialist

servicing several elementary schools within a consortium of school districts or charter schools.

(4) The school district/charter schools grant shall explain a schedule for the specialist(s) to serve the group of schools within several school districts or charter schools similarly to an arts specialist in a single school.

(5) A consortium grant shall provide information for a consortium arts specialist's schedule that minimizes the arts specialist's travel and allows the arts specialist to be well integrated into several schools.

C. Arts specialist grant requirements

(1) Grant programs shall be developed and submitted to the Board consistent with the Beverley Taylor Sorenson Elementary Arts Learning Program model described in R277-490-1C.

(2) Grant applications shall describe arts specialist recruitment efforts.

(3) Grant applications shall describe plans, including timelines, for:

(a) advertising for specialist(s);

(b) employing specialists, including criminal background checks, as required;

(c) a plan for working with specialists to institutionalize the arts program by encouraging and assisting arts specialists to acquire educator licenses or become relicensed;

(d) a plan for training specialists, providing support for specialists (including mentoring) and appropriate evaluation of specialists.

D. School districts/charter schools shall review grant applications and forward approved applications to the USOE.

E. Arts specialist timelines

(1) School applications shall be due to the school districts by May 1 annually.

(2) Charter school and school district applications shall be due to the USOE by May 7 annually.

(3) The Board staff shall work with the Utah Arts Council to select grantees (or work with prospective grantees to improve applications).

(4) The Board, after close consultation with the Utah Arts Council, shall designate schools/consortia for funding no later than June 1 annually.

R277-490-4. Distribution of Funds for Arts Specialist Supplies.

A. The Board shall distribute pro-rated funds for arts specialist supplies to school districts/charter schools/consortia no later than July 1, 2008.

B. School districts/charter schools shall distribute funds directly to arts specialists based on numbers of guaranteed employees provided for in the approved school district/school/consortia grant.

C. School districts/charter schools/consortia shall require arts specialists to provide adequate documentation of arts supplies purchased consistent with the school/consortium plan, this rule and the law.

D. Summary information about effective supplies and equipment shall be provided in the school/consortium evaluation of the program.

R277-490-5. School Districts/Charter Schools/Consortia Employment of School District/Charter School/Consortia Arts Coordinators.

A. School districts/charter schools/consortia may apply for funds to employ full-time arts coordinators in their school district/charter school/consortium.

B. Applicants shall explain how arts coordinators will be used consistent with the Beverley Taylor Sorenson Elementary Arts Learning Program model, what requirements arts coordinators must meet, and what training will be provided by whom.

C. Applicants shall provide documentation of committed matching funds that equal the request from the school district/charter school/consortium.

D. Preference shall be given to applicants that demonstrate in their proposed recruitment and use of coordinators diligent and creative efforts to employ arts coordinators who mirror the minority or unique populations that make up the schools in which coordinators will work.

E. The Board, following close consultation with the Utah Arts Council, shall select school districts/charter schools/consortia to receive funds under this section.

F. Funds shall be distributed to designated school districts/charter schools/consortia no later than July 1, 2008.

R277-490-6. Arts Program Partnership with Utah Institutions of Higher Education for Pre-service, Professional Development, Research, and Leadership Training.

A. The Board shall work closely with the Utah Arts Council to identify interested Utah higher education institutions eligible, prepared and geographically and programmatically suited to work with identified arts specialists, arts coordinators and the schools and programs in which specialists/coordinators are employed.

B. The Board, in close partnership with the Utah Arts Council, shall determine funding and payment timelines to eligible Utah higher education institutions for designated services as appropriate and necessary.

R277-490-7. Beverley Taylor Sorenson Elementary Arts Learning Program Evaluation and Reporting.

A. The Board, in consultation with the Utah Arts Council, shall contract annually, beginning in May 2009, with an independent qualified evaluator through the state procurement process.

B. The Board and the Utah Arts Council shall jointly report annually to the Education Interim Committee as provided in Section 53A-17a-162(6).

KEY: arts program, grants, public schools

Date of Enactment or Last Substantive Amendment: 2008

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-17a-162

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Education, Administration
R277-504
 Early Childhood, Elementary,
 Secondary, Special Education (K-12),
 Communication Disorders, Speech-
 Language Pathologist and Speech-
 Language Technician, and Special
 Education (Birth-Age 5) Certification

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31444

FILED: 05/15/2008, 15:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to add needed changes to ensure that this rule is aligned with other licensure rules in both substance and terminology and processes are updated. Also, unnecessary detail about the program approval process for higher education preschool programs is deleted.

SUMMARY OF THE RULE OR CHANGE: The changes provide for new and amended definitions and updated language throughout the rule to align it with other licensure rules.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53A-1-402(1)(a) and 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The amendments provide alignment with other rules and update terminology, but there are no significant changes in requirements.

❖ LOCAL GOVERNMENTS: There are no anticipating costs or savings to local government. The amendments provide alignment with other rules and update terminology, but there are no significant changes in requirements.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses and persons other than businesses. The changes align the rule with other licensure rules but there are no significant changes in requirements so educators will not be impacted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Although the amendments provide changes to align this rule with other licensure rules, there are no significant changes in requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-504. Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education (Birth-Age 5) [Certification] Licensure.

R277-504-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Communication Disorders license area of concentration" means the areas of content required for providing services to individuals from birth through age 22. Communication Disorders area of concentration carries an audiology endorsement.

C. "Early Childhood license area of concentration" means an Early Childhood Education teaching license required for teaching kindergarten and permitting assignment in kindergarten through grade three. It is recommended for those teaching in formal programs below kindergarten level.

D. "Early intervention credential" is the highest qualified personnel standard established by the Department of Health that persons must meet in able to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings. Establishment of this standard was a collaborative initiative between the Department of Health and the State Office of Education. In order to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings, a person must have an Early Intervention Credential or a Preschool Special Education (Birth-Age 5) license.

E. "Elementary (1-8) license area of concentration" means an Elementary teaching license required for teaching grades one through eight.

F. "Elementary (K-6) license area of concentration" means an Elementary teaching license required for teaching grades kindergarten through six.

[F]G. "Endorsement" means a specialty field or area listed on the teaching license which indicates the specific qualification of the holder.

[G]H. "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

[H]I. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate ~~Contract~~ agreement, to candidates who have also met all ancillary requirements established by law or rule.

[I]J. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.

[J]K. "National Council for Accreditation of Teacher Education (NCATE)" is a nationally recognized organization which accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

L. "Preschool Special Education (Birth-Age 5) license area of concentration" means a teaching license required for teaching preschool students with disabilities.

[K]M. "Secondary license area of concentration" means a Secondary teaching license required for teaching grades six through twelve. Secondary Certificates carry endorsements for the areas in which the holder is qualified.

[M]N. "Special Education license area of concentration (K-12)" means Special Education teaching license required for teaching students with disabilities in kindergarten through grade twelve. Special Education areas of concentration carry endorsements in at least one of the following areas:

- (1) Mild/Moderate Endorsement which permits the holder to teach students with mild/moderate learning and behavior problems;
- (2) Severe Endorsement which permits the holder to teach students with severe learning and behavior problems;
- (3) Hearing Impaired Endorsement which permits the holder to teach students who are deaf or other hearing impaired;
- (4) Visually Impaired Endorsement which permits the holder to teach students who are blind or other visually impaired.

[N]O. Speech-Language Pathologist (SLP) license" means a speech-language pathologist area of concentration required for teaching students with communication disorders, birth through age 21. A speech-language pathologist license carries a Speech-Language Pathologist endorsement.

[O]P. "Speech-language technician (SLT) license area of concentration" means an area of concentration in which an individual has completed a Board-approved bachelor's degree in communication disorders at an accredited higher education institution and additional training as required by the USOE.

Q. "Teacher Education Accreditation Council (TEAC)" is a nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

[P]R. "USOE" means Utah State Office of Education.

R277-504-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the State Board of Education and by Section 53A-

1-402(1)(a) which directs the Board to make rules regarding the ~~certification~~licensing of educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) specify the requirements for Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Special Education (K-12), Communication Disorders (K-12), Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education (Birth-Age 5) licensing; and

(2) specify the standards which must be met for each of these areas by a teacher preparation institution in order to receive Board approval of its program for teachers.

R277-504-3. Level 1 License.

A. The Level 1 license is issued for three years.

B. During the Level 1 provisional period, the employing school district shall supervise the candidate closely and make special assistance available.

C. An applicant for the Level 1 Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Special Education (K-12), Communication Disorders (K-12), Speech-Language Pathologist, Speech-Language Technician, and Preschool Special Education (Birth-Age 5) license area of concentration shall have done all of the following:

(1) graduated with a bachelor's degree, or in the case of Communication Disorders and Speech-Language Pathologist applicants, a masters degree or equivalent, from a nationally or regionally accredited institution consistent with R277-503;

(2) completed a Board-approved program for the preparation of [e]Early [e]Childhood (K-3), [e]Elementary (K-6), Elementary (1-8), [s]Secondary (6-12), Preschool [s]Special [e]Education (K-12), [e]Communication [d]Disorders (K-12), [s]Speech-[h]Language [p]Pathologist and [s]Speech-[h]Language [t]Technician, and Preschool [s]Special [e]Education ([b]Birth-[a]Age 5) specialists;

(3) ~~demonstrated competence in computer understanding and use; and~~

~~—(4)—~~been recommended by an institution whose program of preparation is Board-approved and accredited consistent with R277-503.

~~[D. If a teacher who has been issued a Level 1 license does not teach immediately or has an interruption in service after the first year and more than three years have elapsed, the candidate may request renewal of the Level 1 license by presenting verification of pending employment and nine quarter hours (six semester hours) of credit taken during the preceding five year period prior to the application for renewal.~~

~~—(1) An exception shall be made for SLPs who have had continuous employment in a clinical setting rather than an educational setting.~~

~~—(2) Documented clinical employment shall substitute for employment in education.~~

~~E. If the successful experience from the first to the second year of teaching is greater than five years, the first year of experience may not apply.~~

~~F. Under no circumstances shall a teacher be permitted to teach for more than three years on the Level 1 license without qualifying for the Level 2 license.]D. If a teacher has taught for three years in Utah, a Level 1 license can only be renewed consistent with the following:~~

~~(1) the employing LEA has requested a one year extension consistent with Entry Years Enhancement (EYE); or~~

~~(2) an individual has continuous experience as a SLP in a clinical setting.~~

~~[H]E. The Level 1 Secondary License~~

~~(1) A Level 1 secondary license with subject endorsement(s) is valid in grades six through twelve.~~

~~(2) The 6-12 license requires a major [and minor or composite major] or major equivalent, but the teacher cannot teach in a self-contained class.~~

~~(3) An applicant for the Level 1 Secondary license shall have completed an approved teaching major [and minor or a composite major], consistent with subjects taught in Utah secondary schools. The license is endorsed for all subjects in which the applicant has at least a minor or has completed equivalent training.~~

~~(a) A teaching major requires not fewer than 30 semester hours (45 quarter hours) of credit in one subject.~~

~~(b) A teaching minor requires not fewer than 16 semester hours (24 quarter hours) of credit in one subject.~~

~~(c) A composite major requires not fewer than 46 semester hours (69 quarter hours) of credit distributed in two or more subjects.~~

~~[F]F. A Preschool Special Education (Birth-Age 5) Level 1 License:~~

~~(1) Applicants for the Preschool Special Education (Birth-Age 5) license shall have completed a Board-approved program, consistent with R277-503, for teaching infants, toddlers, and preschool-age children with disabilities.~~

~~(2) Hearing Impaired/Vision Impaired (HI/VI) Endorsements required under this rule shall be issued to meet "the highest requirements in the State applicable to a specific profession or discipline" required by the Individuals with Disabilities Education Act of 2004 (IDEA), Pub. L. No. [105-17]108-446, hereby incorporated by reference.~~

~~(a) Preschool Special Education (Birth-Age 5) license holders who teach children who are hearing impaired (birth-age 5) or vision impaired (birth-age 5) or both, in self-contained, categorical classrooms shall hold an endorsement for Hearing Impaired (Birth-Age 5) or Vision Impaired (Birth-Age 5) or both.~~

~~(b) All professional personnel teaching children with HI/VI in self-contained, categorical settings shall meet the standards in R277-504-3I(1) [and (2) by June 30, 2003].~~

~~(c) Teachers who hold an equivalent license from a state other than Utah shall be required to meet the standards referred to in R277-504-3I(2)(d) upon receipt of an initial Utah license.~~

~~(d) All professional personnel teaching preschool-aged children who are HI/VI in self-contained, categorical classrooms as of January 1998, shall be required to complete a Board-approved training program, consistent with R277-503 [by June 30, 2003], making them eligible for the Birth-Age 5 HI/VI endorsements under this rule.~~

~~(e) This training shall be developed based on an analysis of presently-held licenses and endorsements, teaching experiences, and training activities as compared to the requirements of the new standards.~~

~~[G]G. Applicants for Special Education (K-12) licenses shall have completed a Board-approved program for teaching students with mild/moderate, severe, hearing, or visual [handicaps] impairments. The Special Education license (K-12) is endorsed for any area in which the program has been completed.~~

Educators who hold Special Education licenses may also be issued endorsements.

~~[K]H. Applicants for Communication Disorders license areas of concentration (audiologist) shall have completed a Board-approved program for teaching pupils with communication disorders which includes the master's degree or 30 semester hours earned after meeting requirements for a bachelor's degree.~~

~~[L]I. Speech-Language Pathologist (SLP) License Area of Concentration~~

~~(1) Qualifications: To qualify for the SLP area of concentration, an individual shall have completed a Board-approved program for teaching students with speech/language impairments. Such programs include:~~

~~(a) a master's degree and Certificate of Clinical Competence (CCC); or~~

~~(b) a master's degree; or~~

~~(c) an international equivalent of a master's degree, earned in a communication disorders program, or equivalent after receiving a bachelor's degree at an accredited higher education institution.~~

~~(2) An individual who has completed a Board-approved bachelor's degree program in communication disorders at an accredited higher education institution, and acquired the competencies necessary for assignment as a graduate student intern, as determined by the higher education institution, may receive a one-year letter of authorization from the USOE.~~

~~(a) This letter of authorization shall be issued under R277-504-3I(2)(d), and may be renewed annually for up to three years if:~~

~~(i) the applicant has been admitted to an accredited graduate program at the time the license is issued; and~~

~~(ii) the applicant files with the USOE evidence of completion of at least nine quarter hours (six semester hours) of credit applicable to the acquisition of a master's degree or the equivalent in communication disorders each year that the license is to remain in effect.~~

~~(b) A graduate student intern shall have been recommended by a higher education institution whose program of preparation is Board-approved. The graduate student intern shall be appropriately supervised by a speech-language pathologist.~~

~~(3) An individual with a letter of authorization may perform fully licensed speech-language functions, as directed, solely within the confines of the public school.~~

~~(4) This area of concentration does not qualify the individual to provide services outside of the educational setting.~~

~~[M]J. Speech-Language Technician (SLT) License Area of Concentration~~

~~(1) To qualify for the SLT area of concentration, an individual shall have completed a Board-approved bachelor's degree in communication disorders at an accredited higher education institution and additional training as required by the USOE. Additional professional development shall be completed prior to or within the first year of receiving this area of concentration, in order to meet defined competencies.~~

~~(2) A speech-language technician shall work under the supervision of a speech-language pathologist who accepts full responsibility for the work of the speech-language technician.~~

~~(3) The supervising SLP maintains full responsibility for the caseload of the SLP and any SLTs supervised by the SLP.~~

~~(4) An individual may perform speech-language technician functions and duties solely within the confines of the public school.~~

~~(5) This area of concentration does not qualify the individual to provide services outside of the educational setting.~~

(6) The speech-language technician's function and duties shall conform to Utah's SLP/SLT Handbook, developed by the USOE, 2007.

(7) The performance of SLP and SLT duties shall be strictly consistent with Utah's SLP/SLT Handbook.

(8) Documented clinical employment may be substituted at a school district's discretion for employment in education.

R277-504-4. Level 2 License.

A Level 2 license ~~for Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, Speech-Language Pathologist and Speech-Language Technician, and Special Education (Birth-Age 5)]~~ is issued after:

(1) a candidate completes three years of successful professional teaching;

(2) a candidate completes all other Entry Years Enhancements (EYE) requirements consistent with R277-522; and

(3) the employing public school district or accredited private school recommends the candidate to receive the Level 2 license, based on information from peers and supervisors.

R277-504-5. Special Validations.

~~[A. A Level 1 or Level 2 Early Childhood license may be issued to an applicant who holds or is eligible to hold a Level 1 or Level 2 Elementary license and who has completed two years teaching a full kindergarten or pre-kindergarten program. The two licenses are issued to run concurrently.~~

~~—B]A.~~ An individual holding a Level 2 Elementary license and for whom the employing district has requested a letter of authorization assigning the individual to a kindergarten position may qualify for an Early Childhood license by completing an approved program of early childhood education at an accredited institution of higher education or the Alternative Routes to Licensure Program (ARL). ~~[The program must consist of not more than 10 semester or 15 quarter hours of credit and may be based on demonstrated competence.—]~~The program may also include district ~~[in-~~service] professional development. Practicum experiences should be in the regularly assigned kindergarten classroom of the applicant for the license.

~~[C]B.~~ An Elementary ~~[license is valid in grades one through eight]~~ teacher may be licensed in grades K-3, K-6, or 1-8.

(1) The 1-8 license permits the teacher to teach in any academic area in self-contained classes in grades 1-8.

(2) A teacher ~~[must]~~ shall be endorsed in a subject by the USOE to teach assigned subjects at the 7-8 grade level.

(3) The Middle Level license (5-9) ~~[currently in force will]~~ continues to be valid; however, a middle level license (5-9) has not been issued since April 1, 1989 and [with] is no longer [be-]required of teachers or issued to teachers assigned to the middle school[-, effective April 1, 1989].

R277-504-6. General Standards for Approval of Programs for the Preparation of Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education[-(Birth-Age 5)] Teachers.

A. The teacher preparation program of an institution may be approved by the Board if it:

(1) meets the standards prescribed in the NCATE Professional Speciality Association or 90 percent of the completers pass the Board-approved content assessments; and

(2) requires the study of:

(a) state laws and policies which specify content, values, and other expectations of teachers and other professionals in the school system;

(b) techniques for evaluating student progress, including the use and interpretation of both standardized and teacher-made tests; and

(c) knowledge and skills designed to meet the needs of students with ~~[handicapping conditions]~~ disabilities in the regular classroom. These shall include the following domains:

(i) knowledge of ~~[handicapping conditions]~~ disabilities;

(ii) knowledge of the role of ~~[regular]~~ nonspecial education teachers in the education of students with ~~[handicapping conditions]~~ disabilities;

(iii) skills in assessing the educational needs and progress of students with ~~[handicapping conditions]~~ disabilities in the regular education classroom;

(iv) skills in the implementation of an educational program for ~~[the-]students with [handicapped]~~ disabilities in the regular classroom; and

(v) skills in monitoring student progress.

B. The standard requiring the application of methods and techniques in a clinical setting is met by student teaching carried out under the direction of the institution. The following may be accepted as totally or partially fulfilling this requirement:

(1) two years of full-time contract teaching experience in a regular classroom situation in kindergarten through grade twelve in a public or accredited private or parochial school may totally fulfill the requirement;

(2) teaching in an alternative school or similar school may be accepted for up to one-half of the student teaching requirement;

(3) teaching in a community college, trade-technical college, or other post-secondary teaching experiences may be accepted for up to one-half of the student teaching requirement;

(4) teaching in a preschool or headstart program may be accepted for up to one-half of the student teaching requirement;

(5) teaching experience in business or industry may be accepted for up to one-half of the student teaching requirement; and

(6) other experience accepted by the Board and designated as totally or partially fulfilling the requirement.

R277-504-7. Standards for Approval of Programs for Early Childhood and Elementary Teachers.

The standards ~~[must]~~ shall be applied to the specific age group or grade level for which the program of preparation is designed. The teacher preparation program of an institution may be approved by the Board if it:

A. meets the standards prescribed in the NCATE Professional Speciality Association ~~[or if 90 percent of the completers pass the Board-approved content tests], including a student teaching experience; and~~

B. ~~[R]~~ requires study and experiences needed in disciplines which provide content knowledge needed to teach:

(1) language development and listening, speaking, writing, and reading, with emphasis on language development;

(2) mathematics;

(3) biological and physical science and health;

(4) social studies; and

(5) fine arts.

R277-504-8. Standards for Approval of Program for Preparing Teachers in Major and Minor Fields.

The teacher preparation program of an institution may be approved by the Board if it meets the general and specific standards prescribed in the NCATE Professional Speciality Association [or if 90 percent of the completers pass the Board-approved content tests for teaching majors], including a student teaching experience.

R277-504-9. Standards for Approval of Programs for Special Education (K-12) and Preschool Special Education (Birth-Age 5) Teachers.

The teacher preparation program of an institution may be approved by the Board if it meets the following standards:

A. Mild/Moderate Endorsement: The teacher preparation program of an institution for mild/moderate endorsement may be approved by the Board if it meets the standards prescribed in the Council for Exceptional Children (NCATE Professional Speciality Association) or if 90 percent of the program completers passes the Board-approved content tests for special education teachers.

(1) Assessment: eligibility determination; strength and weakness determination. The program shall require demonstrated competence in selection, design, administration, and interpretation of a representative sample of age-appropriate, norm-referenced, criterion-referenced, and ecological assessments to determine the discrepancies between academic, behavioral, and life skills demands or requirements and actual student performance.

(2) Planning: establishing goals and objectives for students based upon individual assessment, coordination of services, identification of resources, and implementation of activities. The program shall require demonstrated competence in:

(a) projecting long-term outcomes and establishing appropriate annual goals and short-term objectives utilizing assessment data;

(b) designing, planning, and coordinating age-appropriate academic and social integration and transition programs within regular school and community environments;

(c) designing a plan for accessing and coordinating resources available in the student's natural environment to implement long-term outcomes, annual goals, and short-term objectives and identify a representative sample of such resources, both human and technological;

(d) designing appropriate, systematic, data-based, daily individual student activities based on student performance and relevant long-term outcomes, annual goals, and short-term objectives which provide for new skill development, practice, and application across environments;

(e) coordinating all services required related services and a representative sample of support services including peer tutors, parents, and volunteers necessary to implement daily individual student activities which provide for new skill development, practice, and applications across environments;

(f) developing an Individual Education Plan which is an integrated management tool and which meets federal and state requirements.

(3) Implementation: actualization of planning and utilization of effective pedagogy across levels including developmental, remedial, functional and compensatory. The program shall require demonstrated competence in:

(a) implementing a variety of methods and techniques which encompass the following areas:

(i) developmental—natural sequence of acquired skills;

(ii) remedial—reteaching specific areas of weakness;

(iii) functional—skills necessary to ensure independence;

(iv) compensatory—alternative strategies for reaching goals.
(b) knowledge of scope and sequence across academic, behavior, and life skills;

(c) conducting concept and task analysis to identify performance demands for skill use and application;

(d) teaching discrete skills, including selecting and sequencing instructional examples to facilitate acquisition, strategies of trial distribution, systematic strategies of response prompting and fading, and systematic strategies for rewarding correct student responses and correcting student errors in individual, small groups, and large group instruction;

(e) teaching for generalization;

(f) designing, implementing, and evaluating applied behavior analysis including related ethical issues;

(g) implementing effective techniques of consultation, collaboration, and teaming;

(h) utilizing the transdisciplinary approach to instruction.

(4) Evaluation: monitoring student progress; formative and summary program evaluation. The program shall require demonstrated competence in:

(a) designing and implementing data collection systems that measure the accuracy, rate, duration, fluency, and independence of student performance;

(b) designing and implementing data collection systems that measure performance across novel stimuli—generalization—and time—maintenance—and in natural—non instructional—settings;

(c) selecting data collection systems which match the target behavior and intended outcome of instruction;

(d) adjusting instructional procedures based on student performance data;

(e) measuring consumer—e.g., parent, cooperating agency and team—e.g., therapist, regular educator, paraprofessional satisfaction with student educational program and adjusting classroom procedures, methods of communication with significant others, or educational programming based on consumer or team feedback, or all.]

B. Severe Disabilities Endorsement: The teacher preparation program of a higher education institution for severe disabilities endorsement may be approved by the Board if it meets the standards prescribed in the Council for Exceptional Children (NCATE Professional Specialty Association) or if 90 percent of the program completers passes the Board-approved content tests for special education teachers.

(1) Assessment: eligibility determination; strength and weakness determination. The program shall require demonstrated competence in selection, design, administration, and interpretation of a representative sample of age-appropriate, norm-referenced, criterion-referenced, and ecological assessments to determine the discrepancies between functional academic, functional behavior, and functional life skill demands and requirements and actual student performance.

(2) Planning: establishing goals and objectives for students based upon individual assessment, coordination of services, identification of resources, and implementation of activities. The program shall require demonstrated competence in:

(a) designing, planning, and coordinating age-appropriate social integration and transition programs within regular school and community environments;

(b) the requirements specified in Subsections 9(A)(2)(a), (c), (d), (e), and (f).

~~—(3) Implementation: actualization of planning and utilization of effective pedagogy across levels including development, remedial, functional, and compensatory. The program shall require demonstrated competence in:~~

~~—(a) knowledge of scope and sequence across functional life skill, academic, behavior, and life skills;~~

~~—(b) conducting general case analysis of performance demands;~~

~~—(c) the requirements specified in Subsections 9(A)(3)(c), (d), (f), (g), and (h);~~

~~—(4) Evaluation: monitoring student progress; formative and summary program evaluation. The program shall require demonstrated competence in the requirements specified in Subsection 9(A)(4).]~~

C. Hearing Impaired Endorsement: The teacher preparation program of a higher education institution may be approved by the Board if it meets the standards prescribed in the NCATE Professional Speciality Association or if 90 percent of the program completers passes the Board-approved content tests for hearing impaired specialists.

D. Visually Impaired Endorsement: The teacher preparation program of a higher education institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for visually impaired specialists.

R277-504-10. Standards for Approval of Programs for Communication Disorders and Speech-Language Pathologist Licenses.

A. Speech Pathology [~~Endorsement~~]Area of Concentration: The preparation program for Speech-Language Pathologists of a higher education institution may be approved by the Board if it meets the standards prescribed in the NCATE Professional Speciality Association [~~or if 90 percent of the completers pass the Board approved content tests for speech language pathologists~~].

B. Audiology Endorsement: The preparation program for audiologists of a higher education institution may be approved by the Board if it meets the standards prescribed in the NCATE Professional Speciality Association [~~or if 90 percent of the completers pass the Board approved content tests for audiologists~~].

KEY: teacher [~~certification~~]licensing, professional education, accreditation

Date of Enactment or Last Substantive Amendment: [~~December 26, 2007~~]2008

Notice of Continuation: September 7, 2004

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-1-401(3)



Education, Administration
R277-525
Special Educator Stipends

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 31445

FILED: 05/15/2008, 15:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide standards and procedures for distributing funds appropriated for stipends for special educators for additional days of work consistent with S.B. 2, 2008 Legislative General Session. (DAR NOTE: S.B. 2 (2008) is found at Chapter 397, Laws of Utah 2008, and was effective 03/20/2008.)

SUMMARY OF THE RULE OR CHANGE: This new rule provides definitions; responsibilities of school districts and charter schools; and responsibilities of the Utah State Board of Education in the distribution of stipends for special educators.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Section 53A-17a-158

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Funds were specifically appropriated by the 2008 Legislature to provide for the stipends. The Utah State Office of Education will develop criteria and procedures from distribution of funds at no additional cost to the state.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. School districts and charter schools will receive funding to provide for stipends for eligible special educators for approximately three extra days of work per educator.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses and persons other than businesses. Funding was provided by the 2008 Legislature specifically for special educator stipends.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The 2008 Legislature provided specific funding for participation in this program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-525. Special Educator Stipends.

R277-525-1. Definitions.

A. "After the school year" means two weeks after the final day of the required contract period, as determined by the employer. For year-round schools, "after the school year" means off-track periods, but not vacation periods.

B. "Before the school year" means two weeks before the first day of the required contract period, as determined by the employer.

C. "Board" means the Utah State Board of Education.

D. "Duties related to the IEP process" means:

(1) duties/responsibilities provided in 53A-17a-156(4);

(2) preparing paperwork related to the implementation of IDEA; and

(3) other duties or responsibilities related to the IEP process, as determined by the special educator.

Duties related to the IEP process do not include:

(1) professional development;

(2) district level planning; and

(3) direct student instruction.

E. "Federal law regulating students with disabilities" means the Individual with Disabilities Education Act (IDEA), Title 1, Part A, Section 602.

F. "Special educator," for purposes of this rule, means:

(1) a licensed special education teacher as defined under 53A-17a-158(c); or

(2) a licensed speech-language pathologist as defined under Section 53A-17a-158(c).

G. "Special education teacher" means an individual who has a Utah educator license with a special education area of concentration and whose primary assignment is the instruction of students with disabilities who are eligible for special education services.

H. "Speech-language pathologist" means an individual who has a Utah educator license with a speech-language pathologist area of concentration or a speech-language pathologist license and whose primary assignment is the instruction of students with disabilities who are eligible for special education services.

I. "USOE" means the Utah State Office of Education.

J. "Work day for special educator" means the special educator's contract day as determined by the employer. Stipends shall only be paid for actual days worked. A teacher shall not be paid if days/hours are not actually worked. Days are not transferable among teachers.

R277-525-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-158 which requires the Board to distribute money appropriated for stipends for special educators for additional days of work.

B. The purpose of this rule is provide standards and procedures for distributing money appropriated for stipends for special educators for additional days of work:

(1) in recognition of the added duties and responsibilities assumed by special educators to comply with federal law regulating the education of students with disabilities; and

(2) the need to attract and retain qualified special educators.

R277-525-3. School District/Charter School Responsibilities.

A. School districts and charter schools shall contract with individual special educators, defined under R277-525-1F, and request in writing from the special educators:

(1) the number of days (not to exceed 10 or the number of days established by the Board) that the special educator commits to work consistent with R277-525-1G and H; and

(2) the time period (before the school year begins or after the school year ends) that the special educator commits to working the additional days.

B. Special educators hired by school districts/charter schools after October 15 shall receive funding for extra days to the extent of funds available.

C. School districts/charter schools shall submit an invoice to the USOE twice within a fiscal year (July 1 to June 30) for reimbursement for additional contract days worked by special educators as follows:

(1) no later than October 1 for special educators who worked before the school year began; and

(2) no later than June 30 for special educators who worked after the school year ended.

D. School districts/charter schools shall submit a final report to the USOE no later than June 30 annually that provides:

(1) the number of contract days worked by designated special educators;

(2) data and information compiled about hours, duties and responsibilities completed by special educators during additional days on a tracking and accounting form provided by the USOE or using another form acceptable to the USOE; and

(3) other assessment or evaluation information requested from the USOE.

R277-525-4. Board/USOE Responsibilities.

A. The Board shall annually review this program and determine, based upon the annual appropriation, the number of special education days that shall be funded.

B. To simplify accounting and evaluation requirements for school districts and charter schools, the USOE shall:

(1) provide model tracking and accounting materials to school districts and charter schools before June 1, 2008.

(2) provide a checklist of appropriate duties or tasks for special educators consistent with R277-525-1D.

(3) distribute funds to participating school districts and charter schools for eligible special educators on a semiannual basis.

(4) request and collect data regarding use of days for appropriate accountability and evaluation.

KEY: special educators, stipends

Date of Enactment or Last Substantive Amendment: 2008

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-17a-158

◆ ————— ◆

Environmental Quality, Administration
R305-4
Clean Fuels and Vehicle Technology
Fund Grant and Loan Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 31391

FILED: 05/07/2008, 15:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of Rule R305-4 is to specify the procedures for providing grants and loans for qualifying technologies from the Clean Fuels and Vehicle Technology Fund. The requirements for qualifying technologies to be awarded grant and loan monies from the Fund can be found in Rule R307-123 (see separate filing on Rule R307-123, in this issue). (DAR NOTE: The proposed new Rule R307-123 is found under DAR No. 31390 in this issue, June 1, 2008, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The Clean Fuels and Vehicle Technology Program Act, Sections 19-1-401 through 19-1-405, creates the Clean Fuels and Vehicle Technology Fund in Section 19-1-403. Section 19-1-404 of the Act authorizes the Department of Environmental Quality (DEQ) to make rules to establish the procedures for providing grants and loans for qualifying technologies from the Clean Fuels and Vehicle Technology Fund. DEQ is proposing Rule R305-4 to specify these procedures. As proposed, the rule defines the procedures for providing loans and grants to government agencies and private sector businesses to convert vehicles to run on a clean fuel, to purchase original equipment manufacturer (OEM) vehicles, or to retrofit vehicles to provide air pollution reduction benefits, and for the purchase of clean fuel refueling equipment for a private sector business vehicle or government vehicle. This rule also establishes criteria and conditions for awarding grant and loan program monies; and loan repayment and the collection of loans. Section 19-1-405 of the Act also authorizes the Air Quality Board to make rules to establish state-wide eligibility requirements for technologies qualified to be awarded grant and loan monies from the fund. The Board is proposing Rule R307-123 (see separate filing on Rule R307-123 in this issue) to specify these requirements.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-2-104 and 19-1-401

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no change in costs for the state budget because costs for administering the program are already allocated from the Fund and nominal fees for purchasing credit reports for applicants will be recouped from application fees. State government entities that wish to apply for the program are subject to application fees of \$140 for vehicle loans, \$280 for grants, and \$350 for infrastructure loans. Because this is a new program, the actual amount of applications is unknown at this time.

❖ **LOCAL GOVERNMENTS:** There is no change in costs for sources owned or operated by local government. However, local government entities that wish to apply for the program are subject to application fees of \$140 for vehicle loans, \$280 for grants, and \$350 for infrastructure loans. Because this is a new program, the Division of Air Quality (DAQ) is unable to estimate how many government agencies will apply for money from this program.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:**
Small Businesses: No change in costs is expected for small business. However, small businesses that wish to apply for the program are subject to application fees of \$140 for loans, \$280 for grants, and \$350 for infrastructure loans. Because this is a new program, DAQ is unable to estimate how many small businesses will apply for money from this program.
Other Persons: Because the rule is only applicable to the private business and government sectors, no change in costs is expected for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No change in costs is expected for affected persons. However, any business or government entity that wishes to apply for the program are subject to application fees of \$140 for loans, \$280 for grants, and \$350 for infrastructure loans.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no requirements for businesses to participate in this program; therefore, no change in costs is expected. Those entities that wish to apply for the program, will be subject to nominal application fees. Richard W. Sprott, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
 ADMINISTRATION
 168 N 1950 W
 SALT LAKE CITY UT 84116-3085, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/20/2008 at 2:00 PM, DEQ Building, 168 N 1950 W, Room 201, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2008

AUTHORIZED BY: Richard W. Sprott, Executive Director

R305. Environmental Quality, Administration.**R305-4. Clean Fuels and Vehicle Technology Fund Grant and Loan Program.****R305-4-1. Authorization and Purpose.**

(1) As authorized by Section 19-1-404, this rule establishes procedures for:

(a) providing loans and grants to government agencies and private sector businesses to convert vehicles to run on a clean fuel, to purchase OEM vehicles, or to retrofit vehicles as provided under Section 19-1-403 to provide air pollution reduction benefits; and

(b) providing loans or state match grants for the purchase of clean fuel refueling equipment for a private sector business vehicle or government vehicle as provided under Section 19-1-403.

(2) As authorized by Section 19-1-404, this rule establishes criteria and conditions for:

(a) awarding grant and loan program monies; and

(b) loan repayment and the collection of loans.

R305-4-2. Definitions.

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean-fuel vehicle" means clean-fuel vehicle as defined in Subsection 19-1-402(2).

"Department" means the Utah Department of Environmental Quality.

"Fund" means fund as defined in Subsection 19-1-403(5).

"Government vehicle" means government vehicle as defined in Subsection 19-1-402(6).

"Grant" means monies awarded to an applicant from the fund that do not have to be repaid.

"Electric-hybrid vehicle" means electric-hybrid vehicle as defined in Subsection 19-1-402(3).

"OEM vehicle" means OEM vehicle as defined in Subsection 19-1-402(8).

"Private sector business vehicle" means private sector business vehicle as defined in Subsection 19-1-402(9).

"Refueling equipment" means refueling equipment as defined in Subsection 19-1-402(10).

"Retrofit" means retrofit as defined in Subsection 19-1-402(11).

R305-4-3. Grant and Loan Eligibility.

Eligibility for grants and loans from the fund is limited to projects for government vehicles and private sector business vehicles that meet the eligibility requirements set forth in R307-123, and for refueling equipment dispensing a clean fuel as provided for in Subsection 19-1-403-2(d) within the state of Utah.

R305-4-4. Preliminary Approval Application Procedure.

(1) All grant and loan applicants shall apply on forms provided by the Department as required by Subsection 19-1-404(1)(b)(vii)(A), and shall provide additional project information as requested by the Department.

(2) All private sector businesses applying for a loan shall also complete a financial application that includes the following information:

(a) a current credit report from the NACM Business Credit Services or other reporting bureau authorized by the Department;

(b) a completed balance sheet of the personal or real property that will be used to secure the loan;

(c) copies of federal and state income tax returns for the last two years for the corporation and the applicant; and

(d) additional information as requested by the Department.

(3) All Applicants:

(a) may be charged an application fee of \$140 for vehicle loans, \$280 for grants, and \$350 for infrastructure loans as authorized in Subsection 19-1-403(4)(a)(ii);

(b) shall sign a statement acknowledging that:

(i) approved projects must meet all the eligibility requirements listed in R307-123; and

(ii) applicants that are pre-approved are not guaranteed project reimbursement by the Department; and

(c) shall agree in writing to the provisions in Subsections 19-1-404(1)(b)(vii)(B) through (E), and

(d) shall, in the event that a vehicle converted, retrofitted, or purchased using loan or grant proceeds becomes inoperable through mechanical failure or accident:

(i) continue to repay the loan whether or not the vehicle is repairable; or

(ii) appeal to the Department for a resolution as provided for in Subsection 19-1-404(1)(b)(vii)(C).

(A) Applicants that wish to appeal to the Department shall:

1. provide reasonable documentation that the vehicle converted, retrofitted, or purchased is inoperable through mechanical failure or accident; and

2. propose a course of action that may include adjusting the loan repayment schedule or terms of the loan or grant.

(B) Any remedy pursued by the Department will be handled on a case-by-case basis and at the discretion of the Department.

(4) Once the Department has deemed that the application is complete and the proposed project complies with this rule, the application shall be reviewed by a committee consisting of at least the following:

(a) the DAQ Grant and Loan Program Coordinator or designee;

(b) the DAQ Mobile Section Manager or designee;

(c) two DAQ technical specialists chosen by the Department; and

(d) other members as designated at the discretion of the Department.

(5) The committee will evaluate each application according to the criteria provided in Sections R305-4-6 and 7.

(6) When considering grant and loan applications, the Department may modify the dollar amount or project scope for which a grant or loan is awarded.

(7) Submission of an application under this program and this rule constitutes the applicant's acceptance of the criteria and procedures of this rule.

(8) If rejected at any stage of the process, the applicant may consult with the Department to determine appropriate revisions to the application that should be made prior to submitting the application for reconsideration.

R305-4-5. Final Approval Procedure and Payment Process.

(1) Once an applicant's project has been pre-approved to receive a grant or loan, the applicant shall provide all additional documentation required in R307-123.

(2) If rejected at any stage of the process, the applicant may consult with the Department to determine appropriate revisions to the application that should be made prior to submitting the application for reconsideration.

(3) Once an applicant has obtained final approval to receive a grant or loan, including signed contract documents, monies from the fund will be issued as reimbursements for the applicant's expenses.

(4) Grant or loan monies for a state match of a federal or non-federal grant will only be issued to the applicant after the applicant's project has been approved by the granting entity for the federal or non-federal grant.

(5) The approved applicant shall continue to comply with the provisions of this rule.

R305-4-6. Prioritization of Awards for Grant Applications.

As required by Subsection 19-1-404(1)(b)(iv), the Department will consider the following criteria in prioritizing and awarding grants:

(1) The feasibility and practicality of the project;

(2) The financial need of the applicant including its financial condition and the availability of other grants, rebates, or low-interest loans for the project;

(3) Whether and to what extent the monies requested are being provided as a state match of a federal or nonfederal grant; and

(4) The environmental and other benefits to the state and local community attributable to the project.

(5) When determining feasibility, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) the cost of the project relative to market cost information; and

(b) the length of time proposed to complete the project.

(6) When determining practicality, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(i) the technology selected for the project; and

(ii) the location of the project.

(7) When determining the environmental and other benefits to the state and local community attributable to the project, the committee established in Subsection R305-4-4(4) may consider but is not limited to the following criteria:

(a) the pollution reduction benefits attributable to the project;

(b) the location of the project;

(c) the ratio of the total project cost to the environmental and other benefits attributable to the project; and

(d) the accessibility and openness of any refueling equipment to the public, if applicable.

R305-4-7. Prioritization of Awards for Loan Applications.

As required by Subsection 19-1-404(1)(b)(iv), the Department will consider the following criteria in prioritizing and awarding loans:

(1) The feasibility and practicality of the project;

(2) The financial need of applicant including its financial condition and the availability of other grants, rebates, or low-interest loans for the project;

(3) Whether and to what extent the monies requested are being provided as a state match of a federal or nonfederal grant;

(4) The environmental and other benefits to the state and local community attributable to the project; and

(5) The applicant's creditworthiness.

(6) When determining feasibility, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) the cost of the project relative to market cost information; and

(b) the length of time proposed to complete the project.

(7) When determining practicality, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) the technology selected for the project; and

(b) the location of the project.

(8) When determining the environmental and other benefits to the state and local community attributable to the project, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) pollution reduction benefits attributable to the project;

(b) the location of the project;

(c) the accessibility and openness of any refueling equipment to the public, if applicable; and

(d) the ratio of the total project cost to the environmental and other benefits attributable to the project.

R305-4-8. Grant Program Limitations.

(1) Grant applications shall not be approved if:

(a) awarding a grant to an applicant would result in the Department's inability to fulfill its obligations under this program or this rule;

(b) the applicant does not meet the approval requirements of Sections R305-4-4 and 5, and the project eligibility requirements of R307-123;

(c) the fund balance is zero;

(d) awarding a grant to an applicant would result in the fund balance being less than zero;

(e) the vehicle purchased with grant funds is an electric-hybrid vehicle;

(f) the OEM vehicle purchased with the grant funds has previously been titled, registered, or driven more than 7,500 miles by a person or entity other than the applicant.

(g) the amount of a grant for any vehicle will exceed the provisions in Subsections 19-1-403(2)(c); or

(h) the total amount awarded, including federal or nonfederal grants, for the purchase of vehicle refueling equipment will exceed the actual cost of the refueling equipment.

(2) The annual combined total for all grants approved shall not exceed a maximum of \$250,000 as authorized by Subsection 19-1-404(1)(b)(i).

(3) The maximum number of vehicles purchased, converted, or retrofitted using grant funds by any fleet operator shall not exceed 100 vehicles, as authorized by Subsection 19-1-404(1)(b)(iii).

(4) The maximum amount that may be approved by the Department for a grant is \$100,000; the minimum amount that may be approved is \$5,000.

(5) Awards for applicants for both a grant and loan will not exceed the actual cost of the approved project, minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009.

R305-4-9. Loan Program Limitations.

(1) Loan application shall not be approved if:

(a) awarding a loan to an applicant would result in the Department's inability to fulfill its obligations under this program or this rule;

(b) the applicant does not meet the approval requirements of Sections R305-4-4 and 5, and the project eligibility requirements of R307-123;

(c) the fund balance is zero;

(d) awarding a loan to an applicant would result in the fund balance being less than zero;

(e) the vehicle purchased with loan funds is an electric-hybrid vehicle;

(f) the OEM vehicle purchased with the loan funds has previously been titled, registered, or driven more than 7,500 miles by a person or entity other than the applicant;

(g) the amount of a loan for any vehicle will exceed the provisions in 19-1-403(2)(b) minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009; or

(h) the amount to be loaned for the purchase of vehicle refueling equipment will exceed the provisions in Subsection 19-1-403(2)(d)(ii).

(2) The total combined loans approved annually shall not exceed \$250,000.

(3) The maximum amount that may be approved by the Department for a loan is \$100,000; the minimum amount that may be approved is \$5,000.

(4) Awards for applicants applying for both a grant and loan will not exceed the actual cost of the approved project, minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009.

R305-4-10. Servicing the Loans and Loan Repayment.

(1) Loan repayment schedules shall:

(a) not exceed ten years, as required by Subsection 19-1-404(2)(b);

(b) be based on the financial situation and income circumstances of each borrower;

(c) be amortized with equal payment amounts;

(d) be of such amount to pay all interest and principal in full; and

(e) consider projected savings from use of the clean fuel vehicle as required by Subsection 19-1-404(2)(a). In determining projected savings, the Department may use all current and relevant market cost information.

(2) The initial installment payment is due on a date established by the Department.

(3) Subsequent installment payments are due:

(a) on the first day of each month for private sector businesses; or

(b) as determined by the Department for government entities.

(4) A notice of payment and due date shall be sent for each subsequent payment. Non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

(5) Loans made from the fund for a government vehicle shall be made with no interest rate as required by Subsection 19-1-404(2)(d).

(6) Loans made from the fund for a private sector vehicle shall be made at an interest rate provided by Subsection 19-1-404(2)(c).

(7) Any changes in interest rates, re-negotiation of contract terms or elimination of debt must receive approval by the Department.

(8) Loan payments received shall be applied first to penalty, next to interest, and then to principal.

(9) Loan payments may be made in advance or the remaining principal balance of the loan may be paid in full at any time without penalty.

(10) Penalties for late loan payments shall be:

(a) ten percent of the payment due;

(b) assessed and payable on payments received by the Department more than 15 days after the due date;

(c) assessed only once per scheduled payment; and

(d) noticed to the borrower with the amounts of penalty and the total payment due.

(11) Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Department by methods other than the U.S. Postal Service.

(12) If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.

(13) Notice of loans paid in full shall be sent after all penalties, interest, and principal have been paid.

R305-4-11. Recovering on Defaulted Loans.

(1) Loans may be considered in default when three consecutive payments are past due by 30 days or more.

(2) If the loan is determined to be in default under R305-4-11(1), the Department or Division of Finance may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(3) The Department or Division of Finance need not give notice of default prior to declaring the full amount due and payable.

(4) The borrower shall be liable for attorney's fees and collection costs for defaulted loans, whether incurred before or after court action.

R305-4-12. Review.

The Department reserves the right to review all data and applicants for continued compliance with this rule during the period the approved applicant has an outstanding loan obligation. The Department further reserves the right to request supplemental information it may deem necessary from an applicant in order to effectively administer the program and this rule.

R305-4-13. Indemnification.

The state government of Utah, any subdivision, or any agent of state government with responsibility for or obligation to the program cannot be held liable for injury or damage to persons, vehicles or other property caused by or involved with any equipment or vehicle purchased or converted to use a clean fuel or retrofitted in this program.

KEY: air pollution, alternative fuels, grants and loans, motor vehicles

Date of Enactment or Last Substantive Amendment: 2008

Authorizing, and Implemented or Interpreted Law: 19-2-104; 19-1-401



Environmental Quality, Air Quality **R307-121** General Requirements: Clean Fuel Vehicle Tax Credits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31389

FILED: 05/07/2008, 15:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the change is to add clarifying definitions and to modify the language throughout Rule R307-121 so that it is consistent with a related new Rule R307-123 (see separate filing on Rule R307-123, in this issue.) (DAR NOTE: The proposed new Rule R307-123 is found under DAR No. 31390 in this issue, June 1, 2008, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The Air Quality Board is proposing to add the definitions of clean fuel, clean fuel vehicle, and Manufacturer's Statement of Origin to Rule R307-121. The Board is also proposing to make other changes to the language throughout Rule R307-121 that will ensure that it is consistent with a related new Rule R307-123 (see separate

filing on Rule R307-123, in this issue.) This amendment also makes some other technical changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-2-104, 59-7-605, and 59-10-1009

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no change in costs for state government because this revision does not create any new requirements.

❖ LOCAL GOVERNMENTS: Because the amendment does not create new requirements for sources owned or operated by local government, no change in costs is expected for other persons.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Small Businesses: Because the amendment does not create new requirements for sources, no change in costs is expected for small business. Other Persons: Because the amendment does not create new requirements for sources, no change in costs is expected for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the amendment does not create new requirements for sources, no change in costs is expected for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No change in costs is expected for businesses, because the amendment does not create new requirements for sources. Richard W. Sprott, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/20/2008 at 2:00 PM, DEQ Building, 168 N 1950 W, Room 201, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2008

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

R307. Environmental Quality, Air Quality.

R307-121. General Requirements: Clean Fuel Vehicle Tax Credits.

R307-121-1. ~~Authorization and Purpose~~ [and Authorization].

This rule is authorized by Sections 59-7-605 and 59-10-1009. These statutes establish criteria and definitions used to determine eligibility for an income tax credit. R307-121 establishes procedures to provide proof of purchase to the [b]Board for an [item]OEM vehicle or the conversion of a vehicle for which an income tax credit is allowed under Sections 59-7-605 and 59-10-1009.

R307-121-2. Definitions.

Definitions. The following additional definitions apply to R307-121.

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion Equipment" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that vehicle or equipment eligible. [

— "Eligible" means:

— (i) an OEM vehicle; or

— (ii) a vehicle or special mobile equipment on which conversion equipment has been installed that meets the definition of "Certified by the Board" that is found in 59-7-605 and 59-10-1009.]

"Manufacturer's Statement of Origin" means a certificate showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser.

"Original equipment manufacturer (OEM) vehicle" is defined in Subsection 19-1-402(8).

R307-121-3. ~~Procedures~~ Demonstration of Eligibility for OEM Vehicles.

To demonstrate that a vehicle is eligible, proof of purchase shall be made by submitting the following documents to the executive secretary:

(1)(a) a copy of the Manufacturer's Statement of Origin or equivalent manufacturer's documentation showing that the vehicle is an OEM vehicle, or

(b) a signed statement by an Automotive Service Excellence (ASE) certified technician that includes the vehicle identification number (VIN) and states that the vehicle is an eligible OEM vehicle; and

(2) an original or copy of the purchase order, customer invoice, or receipt including the [vehicle identification number (VIN)]VIN; and

(3) a copy of the current Utah vehicle registration.

R307-121-4. ~~Procedures~~ Demonstration of Eligibility for Vehicles Converted to Clean Fuels.

To demonstrate that a conversion of a motor vehicle to be fueled by clean fuel is eligible, proof of purchase shall be made by submitting the following documentation to the executive secretary:

(1) the VIN;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4)(a) if the vehicle is registered within a county with an inspection and maintenance (I/M) program, a copy of the vehicle inspection report from an approved station showing that the converted [alternate]clean fuel vehicle meets all county emissions requirements for all installed fuel systems, or

(b) in all other areas of the State a signed statement by an ASE certified technician that includes the VIN and states that the conversion is functional;

(5) each of the following:

(a) the conversion [system]equipment manufacturer,

(b) the conversion [system]equipment model number,

(c) the date of the conversion, and

(d) the name, address, and phone number of the person that converted the vehicle;

(6) proof of certification required in 59-10-1009(1)(b) or 59-7-605(1)(b); [and]

(7) an original or copy of the purchase order, customer invoice, or receipt; and

[~~(7)~~](8) a copy of the current Utah vehicle registration.

R307-121-5. [~~Procedures~~]Demonstration of Eligibility for Special Mobile Equipment Converted to Clean Fuels.

To demonstrate that a conversion of special mobile equipment to be fueled by clean fuel is eligible, proof of purchase shall be made by submitting the following documentation to the executive secretary:

(1) a description, including serial number, of the special mobile equipment for which credit is to be claimed;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4) the conversion [system]equipment manufacturer and model number;

(5) the date of the conversion;

(6) the name, address and phone number of the person that converted the special mobile equipment; and

(7) an original or copy of the purchase order, customer invoice, or receipt; and

[~~(7)~~](8) proof of certification required in 59-10-1009(1)(b) or 59-7-605(1)(b).

KEY: air pollution, alternative fuels, tax credits, motor vehicles

Date of Enactment or Last Substantive Amendment: ~~July 13, 2007~~2008

Notice of Continuation: July 13, 2007

Authorizing, and Implemented or Interpreted Law: 19-2-104; 19-1-402; 59-7-605; 59-10-1009

◆ ————— ◆
Environmental Quality, Air Quality

R307-123

General Requirements: Clean Fuels
and Vehicle Technology Grant and
Loan Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 31390

FILED: 05/07/2008, 15:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of Rule R307-123 is to specify the requirements for qualifying technologies to be awarded grant and loan monies from the Clean Fuels and Vehicle Technology Fund. The procedures for providing grants and loans for qualifying technologies from the Fund can be found under Rule R305-4 (see separate filing on Rule R305-4, in this issue). (DAR NOTE: The proposed new Rule R305-4 is found under DAR No. 31391 in this issue, June 1, 2008, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The Clean Fuels and Vehicle Technology Program Act, Sections 19-1-401 through 19-1-405, creates the Clean Fuels and Vehicle Technology Fund in Section 19-1-403. Section 19-1-405 authorizes the Air Quality Board to make rules to establish state-wide eligibility requirements for technologies qualified to be awarded grant and loan monies from the Fund. The Division of Air Quality (DAQ) staff created Rule R307-123 to specify these requirements. As proposed, the rule defines certification criteria and proof of purchase requirements for eligible technology. A summary of the provisions included in Rule R307-123 are as follows: 1) eligible equipment to receive monies from the fund are specified as new original equipment manufacturer (OEM) vehicles, motor vehicles that have been converted to use a clean fuel, and motor vehicles that have been retrofitted to reduce pollution emissions; 2) certification criteria for motor vehicle conversions, including pollution reduction requirements, are defined in the enabling statute, Section 19-1-405; 3) certification criteria and for motor vehicle retrofits, including pollution reduction requirements and eligible technology, are defined; and 4) proof of purchase requirements for eligible equipment are specified. Section 19-1-404 of the Act authorizes the Department of Environment Quality (DEQ) to establish the procedures for providing grants and loans for qualifying technologies from the Clean Fuels and Vehicle Technology Fund. The DEQ is proposing Rule R305-4 (see separate filing on Rule R305-4 in this issue) to specify these procedures.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-2-104 and 19-1-401

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no change in costs for the state budget, because costs for administering the program are already allocated from the Fund and nominal fees for purchasing credit reports for applicants will be recouped from application fees. State government entities that wish to apply for the program are subject to application fees of \$140 for loan applications, \$280 for grant applications, and \$350 for infrastructure applications. Because this is a new program, the actual amount of applications is unknown at this time.

❖ LOCAL GOVERNMENTS: There is no change in costs for sources owned or operated by local government. However, local government entities that wish to apply for the program

are subject to application fees of \$140 for loan applications, \$280 for grant applications, and \$350 for infrastructure applications. Because this is a new program we are unable to estimate how many government agencies will apply for money from this program.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Small Businesses: No change in costs is expected for small business. However, small businesses that wish to apply for the program are subject to application fees of \$140 for loan applications, \$280 for grant applications, and \$350 for infrastructure applications. Because this is a new program we are unable to estimate how many small businesses will apply for money from this program.

Other Persons: Because the rule is only applicable to the private business and government sectors, no change in costs is expected for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No change in costs is expected for affected persons. However, any business or government entity that wishes to apply for the program is subject to application fees of \$140 for loan applications, \$280 for grant applications, and \$350 for infrastructure applications.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no requirements for businesses, or state or local government, therefore no change in costs is expected. Those entities that wish to apply for the program will be subject to nominal application fees. Richard W. Sprott, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/20/2008 at 2:00 PM, DEQ Building, 168 N 1950 W, Room 201, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2008

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

R307. Environmental Quality, Air Quality.

R307-123. General Requirements: Clean Fuels and Vehicle Technology Grant and Loan Program.

R307-123-1. Authorization and Purpose.

This rule is authorized by Section 19-1-405, which establishes criteria and definitions used to determine eligibility for use of the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403. R307-123 establishes procedures to provide proof of purchase to the Board for an OEM vehicle, or the conversion or retrofit of a vehicle for which a grant or loan made with the monies available in the Fund is allowed under Subsection 19-1-403(2)(a). Eligible technologies are required to meet the criteria and follow the procedures established in R305-4.

R307-123-2. Definitions.

Definitions. The following additional definitions apply to R307-123.

"Certified by the Board" means that:

(1) A motor vehicle on which conversion equipment has been installed meets the criteria in Subsection 19-1-405(1)(a) and demonstrates a reduction in emissions as defined in Subsection 19-1-405(2); or

(2) A motor vehicle on which a retrofit has been installed meets the following criteria:

(a) the motor vehicle's emissions of regulated pollutants, when operating with the retrofit equipment, is less than the emissions were before the installation of the retrofit equipment; and

(b) a reduction in emissions under Subsection R307-123-2(2)(a) is demonstrated by:

(i) certification of the retrofit by the federal EPA or by a state whose certification standards are recognized by the Board; or

(ii) any other test or standard recognized by the Board.

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that vehicle or equipment eligible.

"Manufacturer's Statement of Origin" means a certificate showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser.

"Original equipment manufacturer (OEM) vehicle" means OEM vehicle as defined in Subsection 19-1-402(8).

"Retrofit" means retrofit as defined in Subsection 19-1-402(11).

"Retrofit equipment" means a diesel oxidation catalyst, a diesel particulate filter, or a closed crankcase filtration system, that has been approved for use in engine retrofit programs by the federal EPA or by a state whose testing protocols are recognized by the Board.

R307-123-3. Demonstration of Eligibility for OEM Vehicles.

To demonstrate that a vehicle is eligible, proof of purchase shall be made by submitting the following documentation to the executive secretary:

(1)(a) A copy of the Manufacturer's Statement of Origin or equivalent manufacturer's documentation showing that the vehicle is an OEM vehicle; or

(b) a signed statement by an Automotive Service Excellence (ASE) certified technician that includes the vehicle identification number(VIN)and states that the vehicle is an OEM vehicle;

(2) An original or copy of the purchase order, customer invoice, or receipt including the VIN; and

(3) A copy of the current Utah vehicle registration.

R307-123-4. Demonstration of Eligibility for Vehicles Converted to Clean Fuels.

To demonstrate that a conversion of a motor vehicle fueled by clean fuel is eligible, proof of purchase shall be made by submitting the following documentation to the executive secretary:

(1) the VIN;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4)(a) If within a county with an inspection and maintenance (I/M) program, a copy of the vehicle inspection report from an approved station showing that the converted clean fuel vehicle meets all county emissions requirements for all installed fuel systems; or

(b) a signed statement by an ASE certified technician that includes the VIN and states that the conversion is functional;

(5) each of the following:

(a) the conversion equipment manufacturer,

(b) the conversion equipment model number,

(c) the date of the conversion, and

(d) the name, address, and phone number of the person that converted the vehicle;

(6) proof that the conversion is certified by the Board;

(7) an original or copy of the purchase order, customer invoice, or receipt; and

(8) a copy of the current Utah vehicle registration.

R307-123-5. Demonstration of Eligibility for Retrofitted Vehicles.

To demonstrate that a retrofit of a motor vehicle is eligible, proof of purchase shall be made by submitting the following documentation to the executive secretary:

(1) the VIN;

(2) each of the following:

(a) the retrofit equipment manufacturer,

(b) the retrofit equipment model number,

(c) the date of the retrofit, and

(d) the name, address, and phone number of the person that retrofitted the vehicle;

(5) proof that the retrofit is certified by the Board;

(6) an original or copy of the purchase order, customer invoice, or receipt; and

(7) a copy of the current Utah vehicle registration.

KEY: air pollution, alternative fuels, grants and loans, motor vehicles

Date of Enactment or Last Substantive Amendment: 2008

Authorizing, and Implemented or Interpreted Law: 19-2-104; 19-1-401; 59-7-605; 59-10-1009

◆ ————— ◆
Environmental Quality, Air Quality

R307-302-3

No-Burn Periods for Fine Particulate

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 31388

FILED: 05/07/2008, 15:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 09/21/2006, the Environmental Protection Agency (EPA) promulgated revisions to the National Ambient Air Quality Standards (NAAQS) for PM2.5. At that time, EPA strengthened the 24-hour PM2.5 standard from the 1997 level of 65 micrograms per cubic meter to 35 micrograms per cubic meter. Because of this new standard, the trigger for calling a mandatory no-burn period is above the current NAAQS. Therefore, this proposal updates the rule to reflect the new NAAQS. Rather than specifying a specific PM2.5 concentration, the revised rule will trigger a no-burn period when Utah Division of Air Quality (UDAQ) forecasts an exceedance of the NAAQS.

SUMMARY OF THE RULE OR CHANGE: Section R307-302-3 establishes a trigger to call a mandatory no-burn period for residential solid fuel burning devices and fireplaces. This rule applies in all of Salt Lake and Davis Counties, and in portions of Utah and Weber Counties. Under the current version of Section R307-302-3, a mandatory no-burn period is triggered when the ambient concentration of PM2.5 measured by the monitors in Salt Lake, Davis, Weber, or Utah Counties reaches the level of 52 micrograms per cubic meter, which is 80% of the 1997 PM2.5 NAAQS. On 09/21/2006, EPA promulgated revisions to the NAAQS for PM2.5, wherein the 24-hour PM2.5 standard was lowered from 65 micrograms per cubic meter to 35 micrograms per cubic meter. Because of this new standard, the trigger for calling a mandatory no-burn period contained in Section R307-302-3 is above the current NAAQS. Therefore, the Utah Air Quality Board is proposing to update the rule to be consistent with the new NAAQS. The Board is proposing that the revised rule language will trigger a no-burn period when UDAQ forecasts an exceedance of the NAAQS, rather than specifying a specific PM2.5 concentration. The Air Monitoring Center has used the new PM2.5 NAAQS to call the no-burn period since 2006, resulting in approximately 10 more no-burn days per season than in previous winters. The proposed change will not result in any more no-burn days, but it will allow UDAQ to enforce all of the mandatory no-burn days. However, UDAQ did not enforce the no-burn period until the ambient PM2.5 levels were above 52 micrograms per cubic meter, because the rule had not been changed to reflect the lowered standard. The proposed change will not result in any more no-burn days, but it will allow UDAQ to enforce all of the mandatory no-burn days.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No change in cost because existing staff will perform smoke patrol duties.

❖ LOCAL GOVERNMENTS: No change in costs because only residences are affected.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Small Businesses: No change in costs because only residences are affected. Other Persons: UDAQ does not know how many residences in the three counties are heated with wood to save money. Therefore it is not possible to determine the total cost. Individual costs are outlined under "compliance costs for affected persons."

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule applies in all of Salt Lake and Davis Counties, and in portions of Utah and Weber Counties to residences for which a fireplace or stove is NOT the sole source of heating. In addition, wood stoves installed in the last 20 years are required to be EPA-certified, and can be used with no visible emissions; when they are properly operated, they would not be subject to the ban. Fireplaces are primarily used for recreational purposes or atmosphere rather than home heating so curtailment is not anticipated to create additional costs for home heating. Wood stoves, however, generally supplement other heating devices; curtailing their use may cause increased costs for other heat sources. The maximum cost would be incurred by a resident who is able to obtain wood free and in no-burn periods must switch to another fuel source. The cost for natural gas could be as much as \$6 per day for a home that could otherwise reasonably be heated with wood. If there were as many as 10 no-burn days in a winter season, the annual cost increase could be \$60.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule affects only residential fireplaces and stoves; there is no cost to businesses. Richard W. Sprott, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2008

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

R307. Environmental Quality, Air Quality.

R307-302. Davis, Salt Lake, Utah, Weber Counties: Residential Fireplaces and Stoves.

R307-302-3. No-Burn Periods for Fine Particulate.

(1) Sole source of residential heating.

(a) Previously registered sole source residential solid fuel burning devices in areas described in (i),(ii),and(iii) below must continue to be registered with the executive secretary or local health district office in order to be exempt during mandatory no-burn periods as detailed below. No new registrations will be accepted in these areas.

(i) Areas of Utah County north of the southernmost border of Payson City and east of State Route 68,

(ii) all of Salt Lake County, and

(iii) areas in Davis County that are south of the southernmost border of Kaysville.

(b) By November 1, 2006, all sole source residential solid fuels burning devices in Weber County west of the Wasatch Mountain Range and areas north of the southernmost border of Kaysville must be registered with the executive secretary or local health district office in order to be exempt during mandatory no-burn periods as detailed below.

(2) When the ambient concentration of PM10 measured by the monitors in Salt Lake, Davis, Weber, or Utah Counties reaches the level of 120 micrograms per cubic meter and the forecasted weather for the specific area includes a temperature inversion which is predicted to continue for at least 24 hours, the executive secretary will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those areas or counties impacting the real-time monitoring site registering the 120 micrograms per cubic meter concentration. Residents of the affected areas shall not use residential solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and registered with the executive secretary or the local health district office, or those having no visible emissions.

(3) PM10 Contingency Plan. If the PM10 Contingency Plan described in Section IX, Part A, of the state implementation plan has been implemented, the following actions will be implemented immediately:

(a) The trigger level for no-burn periods as specified in (2) above will be 110 micrograms per cubic meter for that area where the PM10 Contingency Plan has been implemented; and

(b) In the regions of Utah County north of the southernmost border of Payson City and east of State Route 68, Salt Lake County, Davis County, and all regions of Weber County west of the Wasatch Mountain Range, it shall be unlawful to sell or install for use as a solid fuel burning device any used solid fuel burning device that is not approved by the Environmental Protection Agency.

(4) When the ambient concentration of PM2.5 measured by [the] monitors in Salt Lake, Davis, Weber, or Utah Counties [~~reaches the level of 52 micrograms per cubic meter and the forecasted weather for the specific area includes a temperature inversion which is predicted to continue for at least 24 hours~~] are forecasted to reach or exceed the PM2.5 NAAQS, the executive secretary will issue a public announcement to provide broad notification [~~and will distribute such announcement to the local media notifying the public~~] that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those [~~areas or~~] counties identified by the executive secretary [~~impacting the real-time monitoring site registering the 52 micrograms per cubic meter~~]

~~concentration~~]. Residents of Salt Lake County, Davis County, or the affected areas of Utah and Weber Counties shall not use residential solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and registered with the executive secretary or the local health district office, or those having no visible emissions.

KEY: air pollution, woodburning, fireplaces, stoves

Date of Enactment or Last Substantive Amendment: [~~September 2, 2005~~]**2008**

Notice of Continuation: September 7, 2005

Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104



Environmental Quality, Air Quality
R307-328
Ozone Nonattainment and Maintenance
Areas and Utah and Weber Counties:
Gasoline Transfer and Storage

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31392

FILED: 05/07/2008, 15:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to extend Stage I vapor recovery requirements to all counties within the State of Utah.

SUMMARY OF THE RULE OR CHANGE: Stage I vapor recovery systems collect vapors resulting from the dispensing of gasoline to underground storage tanks. Stage I vapor recovery requirements were implemented in Salt Lake and Davis Counties in the 1980s and in Utah and Weber Counties in 1999. They have proven to be a successful method of controlling both volatile organic compound (VOC) and hazardous air pollutant (HAP) emissions along the Wasatch Front. Based on 2005 data, it is estimated that approximately 3,595 tons of VOC and 282 tons of HAP have been prevented from entering the atmosphere along the Wasatch Front annually by implementation of Stage I vapor recovery systems. A growing information base indicates that the emission of ozone precursors and the subsequent formation of ozone is no longer an issue only along the Wasatch Front, but is a concern across a broad expanse of the intermountain west, including most of rural Utah. It is estimated that over 2,000 tons of VOC and HAP emissions could be eliminated annually if Stage I controls were implemented statewide. With the recent tightening of the National Ambient Air Quality Standard (NAAQS) for ozone, the Air Quality Board is proposing to expand the Stage I vapor recovery requirements throughout the State of Utah. Rules R307-342 and R307-328 work together to establish the Stage I vapor recovery requirements. Rule R307-328 requires gasoline transport vehicles and the bulk plants and service stations that receive

gasoline from them to capture vapors released during transfer operations. Rule R307-342 requires that gasoline delivery equipment provide leak-tight loading and off-loading, and specifies procedures by which contractors may become certified to perform leak tightness tests. The Board is proposing a phase in compliance schedule so that larger commercially run companies with large numbers of stations could schedule the implementation of Stage I modifications. In addition, this phase-in process would allow smaller private facilities the opportunity to save for the up-front capital costs. The proposal allows for facilities to request two six-month extensions. However, all facilities must be in compliance with this rule not later than 04/30/2011.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are approximately 129 tanks that are all part of the State Fuel Network that include Utah Department of Transportation facilities, school districts, universities, correctional facilities, and maintenance facilities. Total cost to modify these underground storage tanks will be approximately \$96,750.

❖ **LOCAL GOVERNMENTS:** Approximately 6 local governments maintain approximately 16 underground gasoline storage tanks. Vapor recovery modification to these tanks will cost approximately \$750 per tank for a total of \$12,000.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:**
Small Businesses: It is estimated that approximately 400 underground storage tanks (UST) are operated by small business owners. Individual costs are estimated to be run between approximately \$750 to \$5,000 per tank modification, depending on type of modification and the amount of labor involved to modify each tank. Its estimated that 22% of the small business USTs are older than 20 years and would require more labor and equipment to modify the tanks. Estimated total cost for small businesses would be approximately \$676,000. **Other Persons:** There may be some additional costs for tank trucks modifications. These are estimated to be approximately \$320 per truck modification. It is impossible to estimate how many trucks will need to be modified. However, it is believed that nearly all tank trucks operating in Utah are already equipped with Stage I technology. No costs are anticipated to other persons not affiliated with gasoline delivery or dispensing facilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individual costs are estimated to be run between approximately \$750 and \$5,000 per tank modification, depending on type of modification and the amount of labor involved to modify each tank. The cost for each bulk plant modification will be approximately \$750 per delivery station. However, the Division of Air Quality does not have through-put data on any of these rural bulk plants, but believes that several of them have through-puts less than 3,900 gallons per 30-day running period. This would exempt them from Stage I technology requirements. The cost for each delivery truck is approximately \$320, but most trucks already are equipped.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Stage I vapor recovery systems have been found to be a successful method of controlling VOC and HAP emissions along the Wasatch Front. Benefit and cost parameters show that implementation of Stage I vapor recovery systems throughout the remainder of the State of Utah would be both cost effective and environmentally beneficial. Making this change now will protect our health, our quality of life, and the environment for years to come. Rick W. Sprott, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/11/2008 at 11:00 AM, Bear River Health Department Environmental Health Building, 85 E 1800 N, Main Conference Room, North Logan, UT; 6/17/2008 at 11:00 AM, The Mickelson Center, 50 E 400 S, Duchesne, UT; 6/17/2008 at 6:00 PM, Grand Center, 182 N 500 W, Room # 4, Moab, UT; 6/18/2008 at 11:00 AM, Sevier County Administration Building, 250 N Main Street, the Auditorium, Richfield, UT; 6/18/2008 at 7:00 PM, St. George City Hall, 175 E 200 N, City Council Chamber, St. George, UT; 6/19/2008 at 2:00 PM, Nephi City Office Building, 21 E 100 N, City Council Chamber, Nephi, UT; and 6/25/2008 at 2:00 PM, DEQ Building, 168 N 1950 W, Room 201, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2008

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

R307. Environmental Quality, Air Quality.

~~R307-328. [Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties.]~~ Gasoline Transfer and Storage.

R307-328-1. Purpose.

The purpose of R307-328 is to establish Reasonably Available Control Technology (RACT) for control of gasoline vapors during the filling of gasoline transport vehicles and storage tanks in Utah. ~~[ozone nonattainment and maintenance areas and Utah and Weber Counties.]~~ The rule is based on federal control technique guidance documents. This requirement is commonly referred to as stage I vapor recovery.

R307-328-2. Applicability.

(1) Transport Vehicles. R307-328 applies to the owner or operator of any gasoline tank truck, railroad tank car, or other gasoline transport vehicle that loads or unloads gasoline in Utah ~~[or Weber County or any ozone nonattainment or maintenance area]~~.

(2) Gasoline Dispensing. R307-328 applies to the owner or operator of any bulk terminal, bulk plant, stationary storage container, or service station located in Utah ~~[or Weber County or any ozone nonattainment or maintenance area]~~.

(3) This rule applies to all transport vehicles and dispensing facilities that operate within Utah according to the compliance schedule defined in section 328-9 of this rule.

R307-328-9. Compliance Schedule.

~~[Sources located within any newly designated nonattainment area for ozone shall be in compliance with this rule within 180 days of the effective date of designation to nonattainment.]~~

~~—(1) Effective May 1, 2000, all Facilities located in Davis, Salt Lake, Utah, and Weber Counties shall be in compliance with this rule.~~

~~—(2) All other facilities located in Utah, shall be in compliance with this rule according to the following phase-in schedule:~~

~~(a) Facilities located in Box Elder, Cache, Tooele and Washington Counties shall be in compliance with this rule by April 30, 2009.~~

~~(b) Facilities located in Emery, Iron, Juab, Millard, Sevier, Summit and Uintah Counties shall be in compliance with this rule by April 30, 2010.~~

~~(c) All facilities located in Utah shall be in compliance with this rule by April 30, 2011.~~

~~(2) If this implementation schedule results in a scheduling and/or financial hardship for an individual facility, that facility may request a six-month extension from the Executive Secretary of the Utah Air Quality Board. A maximum of two six-month extensions may be granted. Regardless of extension requests submitted, all facilities must be in compliance with this rule not later than April 30, 2011.~~

~~(3) A request for an extension must be documented and contain valid reasons why a facility will not be able to meet the phase-in schedule indicated in (1)(a) or (b) above. A late start on preparation or planning is not a valid reason to grant an extension. The request for extension must also contain a proposed implementation schedule that shows compliance to this rule at the earliest possible date, but no later than April 30, 2011.~~

R307-328-10. Authorized Contractors.

~~(1) All modifications performed on underground storage tanks regulated by Title 19, Chapter 6, Part 4, the Utah Underground Storage Tank Act, to bring them into compliance with R307-328, shall be performed by contractors certified under R311-201.~~

KEY: air pollution, gasoline transport, ozone

Date of Enactment or Last Substantive Amendment: ~~[January 16, 2007]~~ 2008

Notice of Continuation: March 15, 2007

Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104(1)(a)

◆ ————— ◆

**Health, Epidemiology and Laboratory
Services, Environmental Services**
R392-100-2
Incorporation by Reference

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31446

FILED: 05/15/2008, 16:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to incorporate the most recent science on food safety as reflected in the 2005 Food and Drug Administration (FDA) model food code which was approved at the Conference for Food Protection. The current Utah rule is based on the FDA 1999 food code. FDA has updated the 1999 code, and the latest revision is the 2005 FDA Food Code. Large industry associations requested this rule to ensure statewide uniformity of food service regulations.

SUMMARY OF THE RULE OR CHANGE: Modifications to the rule address updates based on science found in the 2005 FDA model food code. The changes include a focus to reduce food borne illness by a tiered approach of requirements outlining when to remove infectious employees and restriction of infectious employees from the workplace. The changes also emphasize minimizing bare hand contact as is provided in the current rule, but allow bare hand contact under certain conditions. Increased hand washing is emphasized as an approach to further reduce food borne illnesses. The updated code reflects a change in hot holding requirements from 140 deg F to 135 deg F, which will improve quality of food held while continuing to keep it safe for consumption. The 2005 FDA Code also includes provisions on Reduced Oxygen Packaging requirements to extend shelf life of products produced under this process. The 2005 FDA Code reflects a change from the term Potentially Hazardous Food, to foods which require time and temperature control for safety (TCS). The 2005 FDA Code also extends the shelf life of TCS food products when time only is used as a control, from 4 hours to 6 hours, under certain conditions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-15-2

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: U.S. Public Health Service, Food and Drug Administration, Food Code 2005, Chapters 1 through 8, Annex 1, and Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** The adoption of the new FDA model food code will not cause additional work to the state and, as such, will impose no additional costs to the state budget.
- ❖ **LOCAL GOVERNMENTS:** Local health departments will need to train their inspectors on the new rule. It is estimated that it will take two hours of training to become familiar with the

modifications. There are approximately 100 persons who would need to be trained. Two hundred training hours, multiplied by \$30/hr, is \$6,000.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Almost all food service establishments employ less than 50 persons. There will be some costs to train employees to the new version of the food code, however, it will be minimal as food establishments basically are already complying with the 2005 FDA food code requirements, as indicated by industry representatives. This training can be included within existing staff training meetings already held at food service establishments. Industry representatives state that there will be no additional costs. Very few establishments use the time from preparation as a public health control to control food safety. The number of those that do is not known, and can change at any time. There will be some cost savings to those facilities who keep their food two hours longer than the current code allows. As stated previously, this number is difficult to determine because the number of establishments and type of food controlled is not currently tracked. There will be no additional costs to the public as food service establishments are already complying with the gloving/bare hand requirements. Costs to minimize bare hand contact were incurred with previous rule changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the food service establishments have no additional costs, there are no expected additional costs for an individual person or any individual entities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Adopting the 2005 FDA food code appears to enjoy broad support among regulated industries and will have a possible positive fiscal impact. Giving local jurisdictions waiver authority in certain cases should mitigate any unforeseen impact and allow for local control without compromising public health. David N. Sundwall, MD, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
ENVIRONMENTAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ronald Marsden at the above address, by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

R392. Health, Epidemiology and Laboratory Services, Environmental Services.

R392-100. Food Service Sanitation.

R392-100-2. Incorporation by Reference.

(1) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code [1999]2005, Chapters 1 through 8, ~~and~~ Annex 1, ~~and~~ Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402 are adopted and incorporated by reference, with the exclusion of Sections [3-201.17(A)(4), 4-301.12(C)(5), 4-301.12(D) and (E), 4-501.115, 4-603.16(B)(1), 4-603.16(C),]8-302.14(C)(2),(D) and (E), 8-805.40, and 8-809.20; and

(2) with the following additions or amendments:

- (a) Add definition 1-201.10(B)(8.5) to read:
—“(8.5) "Certified Food Safety Manager" means the same as defined under subsection 26-15a-102(2) and R392-101 Food Safety Manager Certification rule.”
- (b) Add definition 1-201.10(B)(10.5) to read:
—“(10.5) "Code" means R392-100 Utah Food Service Sanitation Rule and related rules.”
- (c) Amend definition 1-201.10(B)(23) to read:
—“(23) "Employee" means the permit holder, person in charge, supervisor or manager, inventory person, or person with responsibilities to serve guests, cook or prepare food, wash utensils, or who has cleaning responsibilities.”
- (d) Add definition 1-201.10(B)(25.5) to read:
—“(25.5) "FDA" means the U.S. Food and Drug Administration.”
- (e) Amend definition 1-201.10(B)(30) to read:
—“(30) "Food employee" means the same as "food handler" under subsection 26-15-1(1).”
- (f) Amend definition 1-201.10(B)(31)(a) to read:
—“(a) For the purposes of this rule, "Food Establishment" shall mean "Food Service Establishment" and refers to any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off premises and regardless of whether there is a charge for the food.”
- (g) Amend definition 1-201.10(B)(31)(b) to read:
—“(b) "Food Establishment" includes but is not limited to:
—(i) bars, bed and breakfasts, breweries, cafeterias, camps, caterers, child care facilities, coffee shops, commissaries, day cares, fairs, group residences, hospitals, hotels, motels, nursing homes, penal institutions, private clubs, restaurants, satellite sites, schools, senior citizen centers, shelters, snack bars, taverns or similar food facilities;
—(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location;
—(iii) the area of a bakery, convenience store, delicatessen, or grocery store where food is prepared and intended for individual portion service and includes areas used for storing food used in this portion of the food establishment, warewashing, utility and waste disposal facilities; and
—(iv) except as exempted in subsection 1-201.10(B)(30)(c)(v), the premises of a church, temple, and synagogue where food is

prepared for the public or may include both members and the public.”

- (h) Amend definition 1-201.10(B)(31)(c)(iv) to read:
—“(iv) A private home where food is prepared or served for private family, religious, or charitable functions where the public is not invited;”
- (i) Amend section 1-201.10(B)(31)(c)(v) to read:
—“(v) The premises of a church, temple or synagogue where food is normally prepared or served only for private family, religious or charitable functions to which the public (other than members of the church, temple, or synagogue) is not invited;”
- (j) Amend section 1-201.10(B)(31)(c)(vi) to read:
—“(vi) The portion of a bakery, convenience store, delicatessen, or grocery store not covered under subsection 1-201.10(B)(30)(b)(iii); and food or water vending machines. Any portion of 1-201.10(B)(30)(c)(vi) may be amended by a Memorandum of Understanding between the local health department and the Utah Department of Agriculture and Food to allow for a more cost effective use of local and state inspection resources;”
- (k) Add section 1-201.10(B)(31)(c)(viii) to read:
—“(viii) A home used to provide adult or child care for four or fewer persons.”
- (l) Amend definition 1-201.10(B)(33) to read:
—“(33) "Game Animal" means an animal, the product of which is food, that is not classified as cattle, sheep, swine, or goat in 9 CFR Subchapter A—Mandatory Meat Inspection, part 301, as poultry in 9 CFR Subchapter C—Mandatory Poultry Products Inspection, part 381, or as fish.”
- (m) Amend definition 1-201.10(B)(41) to read:
—“(41) "Imminent Health Hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on:
—(i) the number of potential injuries or illnesses; and
—(ii) the nature, severity, and duration of the anticipated injury or illness.”
- (n) Amend definition 1-201.10(B)(47) to read:
—“(47) "Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified under Subparagraph 3-201.17(A)(3).”
- (o) Amend definition 1-201.10(B)(61)(c)(v) to read:
—“(v) A food for which a variance granted by FDA or USDA is based upon laboratory evidence which demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. Enteritidis* in eggs or *C. botulinum* can not occur, such as a food that has an a_w and a pH that are above the levels specified under Subparagraphs (c)(ii) and (iii) of this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or”
- (p) Amend definition 1-201.10(B)(87) to read:
—“(87) "Temporary food establishment" means:
—(a) A food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.
—(b) "temporary food establishment" does not include:
—(i) A food establishment that offers only commercially prepared and packaged foods that are not potentially hazardous and require no preparation or handling; or

— (ii) A produce stand that offers only whole, uncut fresh fruit and vegetables."

— (q) Amend the introduction to section 2-102.11 to read:

— "Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge or the certified food safety manager shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of this code. The person in charge or the certified food safety manager shall demonstrate this knowledge by compliance with this code and by responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include."

— (r) Adopt subsections 2-102.11(A) through (O) without changes.

— (s) Add a new number/catchline and section to read:

— "2-102.12 Food Employee Training.

— Food employees shall be trained in food safety as required under 26-15-5 and shall hold a valid food safety permit."

— (t) Amend section 2-301.12(A) to read:

— "(A) Food employees shall clean their hands and exposed portions of their arms with a cleaning compound in a lavatory that is equipped as specified under section 5-202.12 by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers."

— (u) Amend section 2-301.15 to read:

— "Food employees shall clean their hands in a handwashing lavatory or approved automatic handwashing facility and may not clean their hands in a sink used for food preparation, or a curbed cleaning facility used for the disposal of mop water and similar liquid waste."

— (v) Amend section 2-401.11(B) to read:

— "(B) A food employee may drink from a closed unbreakable beverage container if the container is handled to prevent contamination of:"

— (w) Adopt subsections 2-401.11(B)(1) through (3) without changes.

— (x) Amend section 2-403.11(B) to read:

— "(B) Food employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified under sections 2-301.12, 2-301.13, and section 2-301.14(C)."

— (y) Add section 3-201.11(G) to read:

— "(G) Except for food establishments that prepare fruit juices at point-of-sale, the use of unpasteurized fruit juices in food establishments is prohibited."

— (z) Amend section 3-201.13 to read:

— "Fluid milk and milk products shall be obtained from sources that comply with Grade A Pasteurized Standards as specified in law."

— (aa) Amend section 3-201.16 to read:

— "Wild mushroom species shall be obtained from an approved cultivated source under inspection by a regulatory authority."

— (ab) Amend section 3-201.17(A)(1) to read:

— "(1) Commercially raised for food and raised, slaughtered, and processed under a voluntary meat inspection program by the Utah Department of Agriculture and Food, Division of Animal Industry;"

— (ac) Amend section 3-201.17(A)(2) to read:

— "(2) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352, Voluntary Exotic Animal Program; or"

— (ad) Amend the introduction to section 3-201.17(A)(3) and subsections (a) and (b) to read:

— "(3) Raised, slaughtered, and processed under a routine inspection program conducted by the Utah Department of Agriculture and Food, Division of Regulatory Services. Game meat under this program shall be:

— (a) Slaughtered in a facility approved by the Utah Department of Agriculture and Food and with consideration of an antemortem and postmortem examination done by a veterinarian or a trained veterinarian designee, or as approved by the regulatory authority; and

— (b) Processed under a HACCP plan according to laws governing meat and poultry products; or"

— (ae) Amend section 3-301.11(B) to read:

— "(B) Except when washing fruits and vegetables as specified under section 3-302.15, food employees shall minimize contact with exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissues, spatulas, tongs, single-use gloves, or dispensing equipment."

— (af) Amend section 3-302.13 to read:

— "3-302.13 Pasteurized Eggs, Substitute for Raw Shell Eggs for Certain Recipes.*

— (A) Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, eggnog, ice cream, and egg fortified beverages that are not cooked as specified in Subparagraphs 3-401.11(A)(1) or (2).

— (B) Four or more eggs may not be pooled for use as an ingredient unless they are combined and cooked immediately."

— (ag) Add section 3-304.12.5 to read:

— "Utensils used for dispensing frozen desserts shall be stored using methods specified in sections 3-304.12(A), or (D)."

— (ah) Amend section 3-304.13 to read:

— "Linens or napkins may be used in contact with dry foods, such as breads and rolls, if the linens or napkins are replaced each time the container is refilled for a new consumer."

— (ai) Amend section 3-401.11(A)(3) to read:

— "74 degrees C (165 degrees F) or above for 15 seconds for poultry, wild game animals as specified under Subparagraph 3-201.17(A)(3), stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites."

— (aj) Add section 3-501.14 (E) to read:

— "(E) Whenever the temperature of a cooling potentially hazardous food is found to be out of the temperature ranges specified in section 3-501.14 (A) (D), it shall be the responsibility of the person in charge to demonstrate to the regulatory authority that the facility has cooling procedures which are effective in meeting those requirements and that the procedures are followed."

— (ak) Amend section 3-501.16(A) to read:

— "At 57 degrees C (135 degrees F) or above, except that roasts cooked to a temperature and for a time specified under section 3-401.11(B) or reheated as specified in section 3-403.11(E) may be held at a temperature of 54 degrees C (130 degrees F); or"

— (al) Amend Section 3-501.16(C)(2) to read:

~~—(2) By October 15, 2004 the equipment is upgraded or replaced to maintain food at a temperature of 5 degrees C (41 degrees F) or less."~~

~~—(am) Add section 3-501.17(G) to read:~~

~~—(G) In a child care center, baby food, infant formula, and breast milk for infants that are brought from home for the individual child's use shall be:~~

~~—(1) Marked with the name of the child and the date of bottling in the case of breast milk or opening of the container, such as a jar of baby food;~~

~~—(2) Open containers of baby food, infant formula, and breast milk shall be refrigerated and stored for no more than 24 hours; and~~

~~—(3) Infant formula shall be discarded after feeding or within two hours of initiating a feeding."~~

~~—(an) Amend section 3-603.11 to read:~~

~~"3-603.11 Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens.*~~

~~—(A) Except as specified in section 3-401.11(C) and subparagraph 3-401.11(D)(3), and under section 3-801.11(D), if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish that is raw, undercooked, or not otherwise processed to eliminate pathogens is offered in a ready-to-eat form as a deli, menu, vended, or other item; or as a raw ingredient in another ready-to-eat food, the permit holder shall inform consumers by identifying on the menu the foods that have significantly increased risk associated with certain especially vulnerable consumers eating such foods in raw or undercooked form. There are two components to satisfactory compliance with the consumer advisory:~~

~~—Disclosure is satisfied when:~~

~~—Items are asterisked to a footnote that states that the items:~~

~~—(a) Are served raw or undercooked, or~~

~~—(b) Contain (or may contain) raw or undercooked ingredients.~~

~~—Reminder is satisfied when the items requiring disclosure are asterisked to a footnote that states:~~

~~"Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of foodborne illness. Consult your physician or public health official for further information."~~

~~—(ac) Amend section 3-801.11(D) to read:~~

~~—(D) Except when a resident or legal guardian has been informed of the hazards of eating raw or undercooked animal food per section 3-603.11(B) and signed a waiver requesting raw or undercooked animal foods, the following foods may not be served or offered for sale in a ready-to-eat form:"~~

~~—(ap) Adopt subsections 3-801.11(D)(1) through(3) without changes:~~

~~—(aq) Add section 4-204.124 to read:~~

~~"4-204.124 Restraint of Pressurized Containers:~~

~~Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over."~~

~~—(ar) Amend section 4-205.10 to read:~~

~~"4-205.10 Food Equipment, Certification and Classification:~~

~~Food equipment installed after the effective date of this rule must be certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program in order to comply with Parts 4-1 and 4-2 of this chapter."~~

~~—(as) Amend section 4-301.12 (C) to read:~~

~~—(C) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:~~

~~—(1) High pressure detergent sprayers;~~

~~—(2) Low or line pressure spray detergent foamers;~~

~~—(3) Other task specific cleaning equipment;~~

~~—(4) Brushes or other implements; or~~

~~—(5) Receptacles that substitute for the compartments of a multi-compartment sink."~~

~~—(at) Amend section 4-301.14 to read:~~

~~"4-301.14 Ventilation Hood Systems, Adequacy:~~

~~—(A) Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings:~~

~~—(B) A Type I or Type II hood shall be installed at or above all commercial heat-producing appliances according to the provisions of R156-56-701(d) International Mechanical Code, and amendments adopted under R156-56-708."~~

~~—(au) Amend the introduction to section 5-101.11 to read:~~

~~"Drinking water shall be obtained from an approved water system as defined under R309-101 through R309-113 that is either:"~~

~~—(av) Amend section 5-101.11(A) to read:~~

~~"(A) "Community water systems"~~

~~—(aw) Amend section 5-101.11(B) to read:~~

~~"(B) "Non-transient, non-community water system; or""~~

~~—(ax) Add section 5-101.11(C) to read:~~

~~—(C) "Non-community water system."~~

~~—(ay) Amend section 5-101.12 to read:~~

~~"A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system by:~~

~~—(A) The pipe system shall be flushed with clean, potable water until dirty water does not appear at the point of outlet:~~

~~—(B) The system shall be filled with a water/chlorine solution containing:~~

~~—(1) At least 50 parts per million (50mg/L) of chlorine and the system shall be valved off and allowed to stand at least 24 hours; or~~

~~—(2) The system shall be filled with a water/chlorine solution containing at least 200 parts per million (200 mg/L) of chlorine and allowed to stand for three hours:~~

~~—(C) Following the required standing time, the system shall be flushed with clean potable water until the chlorine is purged from the system:~~

~~—(D) The procedure shall be repeated where shown by bacteriological examination that contamination remains present in the system."~~

~~—(az) Amend section 5-102.11(A) to read:~~

~~—(A) Water from a public water system shall meet 40 CFR 141-National Primary Drinking Water Regulations; and"~~

~~—(ba) Amend section 5-102.11(B) to read:~~

~~—(B) R309-101 through R309-113 Rules for Public Drinking Water Systems."~~

~~—(bb) Amend section 5-102.13 to read:~~

~~"Water from a non-community water system, or a non-transient, non-community water system shall be sampled as required by R309-103 Drinking Water: Water Quality Maximum Contamination Levels (MCLs) and R309-104 Drinking Water: Monitoring, Reporting, and Public Notification and local drinking water quality regulations."~~

~~—(bc) Amend section 5-102.14 to read:~~

~~"The most recent sample report of the non-community water system or non-transient, non-community water system shall be retained on file in the food establishment and the report shall be maintained as required by R309-104-8."~~

— (bd) Amend section 5-103.11(B) to read:
 — "Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment, and"

— (be) Add section 5-103.11(C) to read:
 — "(C) Hot and cold water shall be provided through tempered mixing faucets at all handwashing lavatories, food preparation sinks, warewashing sinks, service sinks, or curbed cleaning facilities."

— (bf) Amend section 5-202.11(A) to read:
 — "(A) A plumbing system shall be designed, constructed, and installed as required by R156-56-701(e) International Plumbing Code and R156-56-707 amendments to the International Plumbing Code."

— (bg) Amend section 5-202.12(A) to read:
 — "(A) A handwashing lavatory shall be equipped to provide water at a temperature of at least 95°F within 30 seconds of opening the mixing valve."

— (bh) Amend section 5-203.11(C) to read:
 — "(C) An adequate number of handwashing stations shall be provided for each temporary food establishment to include: a minimum of one handwashing station equipped with one enclosed container with a spigot, soap, water, paper towels, and a collection container for waste water."

— (bi) Amend section 5-203.14 to read:
 — "Except for water heater drains and clothes washers a plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by law, by:
 — (A) Providing an air gap as specified under section 5-202.13; or
 — (B) Installing an approved backflow prevention device as specified under section 5-202.14."

— (bj) Amend section 5-203.15 to read:
 — "The water supply to carbonators shall be installed according to the requirements of R156-56-701(e) International Plumbing Code and R156-56-707 Amendments to the International Plumbing Code."

— (bk) Amend section 5-205.13 to read:
 — "5-205.13 Scheduling Inspection and Service for a Water System Device.
 — (A) A device such as a water treatment devices shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.
 — (B) The premise owner or responsible person shall have the backflow prevention assembly tested by a certified backflow assembly tester at the time of installation, repair, or relocation and at least on an annual schedule or more often when required by the regulatory authority."

— (bl) Amend section 6-201.14(A) to read:
 — "(A) A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerator, warewashing areas, food storage, and toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas subject to moisture, flushing, or spray cleaning methods."

— (bm) Amend section 6-301.11 to read:
 — "6-301.11 Handwashing Cleaners and Hand Sanitizers, Availability.

— (A) Each handwashing lavatory or group of 2 adjacent lavatories shall be provided with a supply of hand cleaning liquid, powder, bar soap; and
 — (B) When a hand sanitizer is used, each handwashing lavatory or group of 2 adjacent lavatories shall be provided with a hand sanitizer or a chemical hand sanitizing solution used as a hand dip.
 — (C) When a hand sanitizer is used, the dispenser for the hand sanitizer or the chemical hand sanitizing solution used as a hand dip shall be located at the handwashing lavatory and may not be located anywhere else."

— (bn) Amend section 6-301.13 to read:
 — "Except for a combination approved by the regulatory authority, a sink used for food preparation or utensil washing, or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing lavatory as specified in sections 6-301.11, 6-301.12, and section 5-501.16(C)."

— (bo) Amend section 6-501.111 to read:
 — "The presence of insects, rodents, and other pests shall be controlled by:
 — (A) Routinely inspecting incoming shipments of food and supplies;
 — (B) Routinely inspecting the premises for evidence of pests;
 — (C) Using methods, if pests are found, such as trapping devices or other means of pest control as specified under sections 7-202.12, 7-206.12, and 7-206.13; and
 — (D) Eliminating harborage conditions."

— (bp) Add section 7-203.12 number/catchline to read:
 — "7-203.12 Food Containers Prohibited from Storing Toxic Materials."
 — (bq) Add section 7-203.12 to read:
 — "A food container may not be used to store, transport, or dispense poisonous or toxic materials."
 — (br)(a) Amend section 8-103.10 to read:
 ["]8-103.10 Modifications and Waivers.
 (A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.
 (B) A variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 must be copied to the Utah Department of Health, [Bureau of Food Safety and Environmental Health]Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.
 (C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance.["]

— (bs)(b) Amend section 8-103.11 to add:
 ["](D) In addition, a variance from section 3-301.11 may be issued only when:
 (1) the variance is limited to a specific task or work station;
 (2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;
 (3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and
 (4) the applicant can demonstrate active management control of this risk factor at all times.["]

— (bt)(c) Amend Section 8-302.14 (C) to read:

[~~2~~]²A statement specifying whether the food establishment is mobile or stationary and temporary or permanent.[²

~~—(bu) Delete Sections 8-302.14 (D) and (E):~~

~~[(bv)](d) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).~~

~~[(bw)](e) Amend section 8-304.10(A) to read:~~

~~[(e)](A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency.[²~~

~~—(bx) Amend section 8-304.11(H) to read:~~

~~—“(H) Upgrade or replace refrigeration equipment as specified under section 3-501.16(C), if the circumstances specified under Subparagraphs (G)(1) (3) of this section do not occur first, and by no later than October 15, 2004;”]~~

~~[(by)](f) Amend section 8-304.11(J) to read:~~

~~[(f)](A) Accept notices issued and served by the REGULATORY AUTHORITY according to LAW:[²~~

~~[(bz)](g) Amend section 8-304.11(K) to read:~~

~~[(g)](A) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Code or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and[².~~

~~[(ca)](h) Amend section 8-401.10(A) to read:~~

~~[(h)](A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations.[²~~

~~—(cb) Amend section 8-403.50 to read:~~

~~—“Except as specified in section 8-202.10, the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law.”]~~

~~[(ce)](i) Amend section 8-501.10(B) to read:~~

~~[(i)](B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee ~~and other employees~~ or conditional employee; and[²~~

~~[(cd)](j) Add section 8-501.10(C) to read:~~

~~[(j)](C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703.[²~~

~~[(ee)](k) Amend section 8-601.10 to read:~~

~~[(k)](A) Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions.[²~~

~~[(ef)](l) Amend section 8-701.30 to read:~~

~~[(l)](A) Service is effective at the time the notice is served or when service is made as specified in section 8-701.20(B).[²~~

~~[(eg)](m) Amend section 8-803.10 to read:~~

~~[(m)](A) 8-803.10 Impoundment of Adulterated Food Products Authorized.~~

~~(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.~~

~~(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption,~~

~~(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health and~~

~~(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated,~~

the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping.[²

~~[(eh)](n) Amend section 8-803.60 to read:~~

~~[(n)](A) The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11.[²~~

~~[(ei)](o) Amend section 8-803.90 to read:~~

~~[(o)](A) The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated.[²~~

~~[(ej)](p) Amend section 8-804.30 number/catchline to read:~~

~~[(p)](A) 8-804.30 Contents of the Summary Suspension Notice.[²~~

~~[(ek)](q) Amend section 8-805.10(A) to read:~~

~~[(q)](A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties.[²~~

~~[(el)](r) Amend section 8-805.20 to read:~~

~~[(r)](A) A response to a hearing notice or a request for a hearing as specified in section 8-805.10 shall be in written form and contain the following:~~

~~(A) Response to a notice of hearing must include:~~

~~(1) An admission or denial of each allegation of fact;~~

~~(2) A statement as to whether the respondent waives the right to a hearing;~~

~~(3) A statement of defense, mitigation, or explanation concerning all claims; and~~

~~(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.~~

~~(B) A request for hearing must include:~~

~~(1) A statement of the issues of fact specified in section 8-805.30(B) for which a hearing is requested; and~~

~~(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.~~

~~(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.~~

~~(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any.[²~~

~~[(em)](s) Amend ~~the introduction to~~ section 8-805.50(A)(1) to read:~~

~~[(s)](1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:[²~~

~~[(t)](A) Adopt subsections 8-805.50(A)(1)(a) through (c) without changes.~~

~~[(eo)](v) Amend subsection 8-805.50(A)(2) to read:~~

~~[(v)](2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-805.10(C) or for matters as determined necessary by the regulatory authority.[²~~

~~[(ep)](w) Amend section 8-805.60 number/catchline to read:~~

~~[(w)](A) 8-805.60 Notice of Hearing Contents.[²~~

~~[(eq)](w) Amend section 8-805.80 number/catchline to read:~~

~~[(w)](A) 8-805.80 Expedient and Impartial Hearing.[²~~

~~[(er)](x) Amend section 8-805.90 number/catchline to read:~~

~~[(x)](A) 8-805.90 Confidentiality of Hearing and Proceedings.[²~~

~~(es)~~(v) Amend section 8-805.90(A) to read:

[^(a)](A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law.[⁽²⁾]

~~(et)~~(z) Amend ~~[the introduction to]~~section 8-806.30(B) to read:

[^(b)](B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer [⁽²⁾]

~~(ea)~~(aa) Adopt subsections 8-806.30(B)(1) through (2) without changes.

~~(ev)~~(ab) Amend section 8-807.60 to read:

[⁽²⁾]Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer.[⁽²⁾]

~~(ew)~~(ac) Amend section 8-808.20 to read:

[⁽²⁾]Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review.[⁽²⁾]

~~(ex)~~(ad) Amend section 8-811.10(B) to read:

[⁽²⁾](B) Any person who violates any provision of this rule may be assessed a civil penalty not to exceed the sum of \$5,000.00 or be punished for violation of a class B misdemeanor for the first violation. For any subsequent similar violation within two years, the person may be punished for violation of a class A misdemeanor as provided in section 26-23-6.[⁽²⁾]

~~(ey)~~(ae) Amend section 8-813.10 number/catchline to read:

[⁽²⁾]8-813.10 Petitions, Penalties, Contempt, and Continuing Violations.[⁽²⁾]

~~(ez)~~(af) Amend section 8-813.10(B) to replace the phrase [⁽²⁾](designate amount)[⁽²⁾] with the phrase [⁽²⁾]\$5,000[⁽²⁾].

~~(da)~~(ag) Add paragraph 8-813.10(D) to read:

[⁽²⁾](D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of [~~the~~] its order.[⁽²⁾]

(3) The requirements of the Utah Uniform Building Standards Act Rules as found in Sections R156-56-701(1)(c), and R156-56-803 are adopted and incorporated by reference.

KEY: public health, food services, sanitation

Date of Enactment or Last Substantive Amendment: ~~[September 3, 2002]~~2008

Notice of Continuation: March 22, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-2

◆ ————— ◆

**Labor Commission, Antidiscrimination
and Labor, Labor
R610-4
Employment Agency Licensing**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 31438

FILED: 05/15/2008, 14:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This filing repeals the Commission's existing rule regarding Commission regulation of employment agencies. This action is necessary because the 2008 Utah Legislature (S.B. 60) repealed the Labor Commission's authority to engage in such regulation. (DAR NOTE: S.B. 60 (2008) is found at Chapter 240, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34-23-101 et seq., 34-28-1 et seq., 34-40-101 et seq., and 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** In the past, Labor Commission's expense in administering this regulation has been minimal, and the program generated no income. For these reasons, there will be no impact on the state budget as a result of the repeal of this rule.

❖ **LOCAL GOVERNMENTS:** This change does not affect local governments and will not result in any cost or savings to them.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Small businesses performing services as employment agencies will no longer be required to comply with Labor Commission regulations. This may result in some small savings in staff time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this rule change repeals an existing regulatory requirement, it will reduce existing compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Repeal of this rule eliminates an unnecessary regulatory requirement and the small costs associated with that requirement. It may therefore have a de minimis fiscal impact on businesses. Sherrie Hayashi, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR, LABOR
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Heather Morrison at the above address, by phone at 801-530-6921, by FAX at 801-530-7601, or by Internet E-mail at hmorrison@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R610. Labor Commission, Antidiscrimination and Labor, Labor.

~~[R610-4. Employment Agency Licensing.~~

~~R610-4-1. Authority.~~

~~— This rule is being enacted under authority of Section 34A-1-104.~~

~~R610-4-2. Definitions.~~

~~— A. "Applicant" means that person making application to the Division for a license.~~

~~— B. "Commission" means The Labor Commission.~~

~~— C. "Division" means the Division of Antidiscrimination and Labor within the Commission and the personnel within the Division.~~

~~— D. "Division of Adjudication" means the Division of Adjudication within the Commission and the personnel within the Division.~~

~~— E. "Employment Agency" means all persons, firms, corporations or associations who operate for the purpose of procuring or obtaining for money or other valuable consideration, either directly or indirectly, any work or employment for persons seeking the same, or to otherwise engage in such business, or in any way to act as a broker or go-between between employers and persons seeking work.~~

~~— F. "Hearing" means that part of agency action specified in Section 63G-4-203.~~

~~— G. "Job Applicant" means that person who requests the service of an employment agency in seeking employment, training, counseling, resume service, or related services.~~

~~— H. "License" means a license issued by the Division, as provided in Section 34-29-21.~~

~~— I. "Licensee" means a person who holds a valid license defined in R610-4-2-H. and issued by the Division.~~

~~— J. "Local License" means a license to carry on the business of an employment agency issued by a local licensing agency as provided in Sections 34-29-1 through 5.~~

~~— K. "Person" means any individual, company, society, firm, partnership, association, corporation, manager, contractor, subcontractor, or their agents or employees.~~

~~— L. "Presiding Officer" includes those defined by Section 63G-4-103(1)(h)(l).~~

~~R610-4-3. Labor Commission License a Prerequisite to Local License.~~

~~— A local license shall not be issued until that license prescribed by Section 34-29-21 has been secured by applicant.~~

~~R610-4-4. Application for License.~~

~~— A written application for an employment agency license shall be filed with the Division and shall include:~~

~~— A. The name and address of the applicant. The names and addresses of each partner from applicant partnerships, and the name and address of principal officer or director, of applicant corporations.~~

~~— B. The full address of the place where the business of the employment agency is to be conducted.~~

~~— C. The business or occupation engaged in by each applicant, partner, principal officer or director for at least two years immediately preceding the filing of the application.~~

~~— D. The proposed name of the agency. The Division may reject any proposed name which is the same, or similar to, the public employment agency or to a presently licensed employment agency.~~

~~The applicant which is to be an enfranchised member of an employment agency system may, however, include in its application the name of the system.~~

~~— E. In addition, two affidavits shall be submitted as to the character of applicants by persons who are residents of the city or county in which the agency is to be conducted, and who have known applicant for at least one year. Affidavit shall be completed as to the individual or to the partners, if a partnership and if a corporation, as to the principal officer or director.~~

~~— F. A photo copy of the bond filed with the city or county as specified in Section 34-29-4.~~

~~— G. The applicant's completed financial statement.~~

~~— H. Other information as the Division may require.~~

~~R610-4-5. Eligibility Requirements for License.~~

~~— A. In the opinion of the Division applicant shall be:~~

~~— 1. Of good character, and~~

~~— 2. Able to show financial responsibility for proper conduct of business.~~

~~— B. The applicant shall be at least 21 years of age.~~

~~R610-4-6. Required Documents.~~

~~— The following documents shall be filed for approval, together with the application for license.~~

~~— A. Fee schedules as provided in Section 34-29-10.~~

~~— 1. Subsequent fee schedule changes may be made as provided in Section 34-29-10.~~

~~— B. Employer job order form in duplicate.~~

~~— C. Job applicant's contract if different from job order form.~~

~~R610-4-7. Denial, Suspension or Revocation of License.~~

~~— The Division may deny, suspend or revoke a license when:~~

~~— A. The application or the required documents are not in proper form when submitted. Applicant may re-submit in proper form within 30 days after notice by the Division. If proper submission is not completed during this period, license shall be denied;~~

~~— B. Any information provided as a part of the application process is false or misleading; or~~

~~— C. An applicant's license has been revoked for cause within three years from the date of application.~~

~~R610-4-8. Period of License.~~

~~— A license to operate an employment agency is valid only for the person and place named in the license and is effective from the date specified therein to and including the next following December 31, unless suspended or revoked.~~

~~R610-4-9. Renewal of License.~~

~~— A. Annually, at least 45 days prior to the expiration date of the license, the Division shall mail to each currently licensed employment agency a license renewal application form and may require specific documents to be submitted with the renewal form.~~

~~— B. Each employment agency or their agent shall submit the completed license renewal form along with any requested documents at least 30 days prior to the expiration date of their current license.~~

~~R610-4-10. Advertising.~~

~~— A. No employment agency shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement.~~

~~— B. Advertising shall be factual.~~

— C. Positions listed in the "Help Wanted" columns of newspapers or other media shall refer to bona fide openings available at the time copy is given to these publications for insertion.

R610-4-11. Ethical Practice and Conduct.

— Every licensee shall deal openly, fairly, and honestly in the conduct of the employment agency business and comply with the following standards:

— A. Relations with employers:

— 1. A candidate's personal record, employment record, qualifications, and salary requirements shall be stated by the agency to the employer as accurately and fully as possible.

— 2. Candidates shall be referred to the employer for interview only with the prior authorization of the employer through a bona fide job order, which may be given verbally.

— 3. Confidential information relating to the business policy of employers, which is imparted as an aid to the effective handling of their job requirements, shall be treated accordingly.

— 4. Letters, bulletins, and resumes concerning applicants that are presented to employers shall represent bona fide candidates.

— B. Service charges and collections:

— 1. No fee charge shall exceed the maximum amount applicable, as listed on the fee schedule filed with the Division, at the time of job referral resulting from a bona fide job order.

— 2. No job applicant shall be held obligated for a fee until an offer and acceptance have been made between employer and job applicant as a result of the agency's efforts resulting from a bona fide job order.

— 3. Adjustments and refunds of fees shall be made promptly.

— 4. Account collection methods shall conform to ethical business standards.

R610-4-12. Bona Fide Job Order.

— A bona fide order for employment may be considered to have been given by an employer to an employment agency under the following conditions:

— A. If the employer or his agent, in person, by telephone, by telegram, or in writing, registered a request that the agency recruit, or gave permission to the agency to refer, applicants for employment who meet stated job specifications and furnishes information as required by Section 34-29-13:

— 1. The order is valid for the referral of any qualified applicant until it is filled or canceled by the employer and may serve as the basis for agency advertising. The agency shall contact the employer after a reasonable length of time to insure that the position is still vacant prior to any additional advertising.

— B. A bona fide order for employment valid for one specific applicant only (and not valid for advertising) shall be considered to have been given if, as the result of the agency's bringing the qualifications of the job applicant to the attention of an employer, the employer's interest in exploring the possibility of employing the applicant is evidenced by one or more of the following facts:

— 1. The employer agrees to interview the job applicant.

— 2. The employer requests that the agency furnish him with the job applicant's resume or other written history data.

— 3. The employer initiates direct contact with the job applicant as a result of information furnished by the agency.

— C. The employment agency shall identify itself to employers as an agency and in all cases where the employer is to pay the fee, the agency shall obtain the employer's agreement from the personnel manager or other agent.

R610-4-13. Commencement of Agency Action and Hearings.

— A. A dispute involving fees, as denoted in Section 34-29-10(3), shall be filed with the Division of Adjudication in writing, which filing shall constitute a request for agency action.

— B. For purposes of Section 63G-4-202(1), the agency action requested in R610-4-13.A. is designated as an informal adjudicative proceeding conducted subject to the provisions of Section 63G-4-203. However, any proceeding may be converted to a formal adjudicative proceeding pursuant to Section 63G-4-202(3).

— C. The Division of Adjudication may investigate any complaint of alleged violation of Sections 34-29-1 et seq. or R610-4 against an employment agency to determine the merits of the complaint, and attempt to resolve the dispute.

— D. If an informal hearing is held, the presiding officer shall hear both sides and accept all relevant evidence.

— 1. A signed Order by the presiding officer shall be issued pursuant to Section 63G-4-203.

— 2. After issuance of the presiding officer's Order, the only agency review from an informal adjudicative proceeding available to any party is a request for reconsideration as specified in Section 63G-4-302. Reconsideration shall be based on the contents of the file. No new evidence shall be accepted. The Commission, or Division Director if so designated by the Commission, shall be the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63G-4-302(3).

— 3. Judicial review of the final agency action resulting from an informal adjudicative proceeding shall be by the district court pursuant to Section 63G-4-402.

— E. Any proceeding converted to a formal adjudicative proceeding by the presiding officer shall be conducted pursuant to Section 63G-4-206.

— 1. A signed Order issued by the presiding officer shall be pursuant to Section 63G-4-208.

— 2. After issuance of the presiding officer's Order resulting from a formal adjudicative proceeding, any party may seek review of the Order by the Commission, pursuant to Section 63G-4-301.

— 3. Judicial review of the final agency action resulting from a formal adjudicative proceeding shall be pursuant to Section 63G-4-403.

R610-4-14. Time.

— A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

— B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

— 1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

— 2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

— 3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

— 4. No additional time for mailing shall be allowed.

KEY: employment agencies, licensing

Date of Enactment or Last Substantive Amendment: July 2, 1999

Notice of Continuation: June 11, 2004

Authorizing, and Implemented or Interpreted Law: 34-23-101 et seq.; 34-28-1 et seq.; 34-40-101 et seq.; 63G-4-102 et seq.]



Natural Resources, Water Rights
R655-14
 Administrative Procedures for
 Enforcement Proceedings Before the
 Division of Water Rights

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31431

FILED: 05/14/2008, 15:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The division has recognized points in which the rule may be clarified and amended to more closely parallel similar adjudicative processes in other venues. The proposed amendments will make application of the rule more equitable, as is detailed in the summary of the change. The amendments will accommodate statutory changes implemented by the passage of S.B. 228 (2008 General Session). (DAR NOTE: S.B. 228 (2008) is found at Chapter 282, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: The proposed changes incorporate both substantive and nonsubstantive amendments which provide for: 1) clarification of the roles, authority, and functions of division personnel administering the enforcement program; 2) amendment of monetary penalty calculations in certain situations ("Avoided Cost Economic Benefit") to achieve results more equitable and proportionate to the seriousness of the violations; 3) addition of monetary penalty calculations for violations pertaining to well drilling; 4) deletion of duplicative and nonessential language; and 5) technical and grammatical corrections to make the rule consistent with the Division of Administrative Rules' preferred format and standards (e.g., citations to statutes and other rules).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-2-1(4)(g), and Sections 73-2-25, 73-2-26, and 73-3-25

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The proposed amendments will result in minimal costs to reprint the rule once the amendments are made effective.
- ❖ LOCAL GOVERNMENTS: The proposed amendments do not apply to local governments; no costs or savings are anticipated. The amendments will apply only to application of the rule by division personnel and to the penalties calculated in specific circumstances.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The proposed amendments do not apply to a small business or other persons except as a small business or other person may be alleged to have violated a pertinent statute. In that case, compliance costs or savings would be as described for affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed substantive amendments to penalty calculations apply only to persons alleged to have violated statutes in specific circumstances. For some persons, depending on the facts pertaining to the alleged violation, a lower monetary penalty may be calculated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact to businesses from this rule amendment beyond the potential compliance cost or savings that may result if a business is determined to have violated a statute implemented under the amended rule. Michael Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
 WATER RIGHTS
 Room 220
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kaelyn Anfinsen at the above address, by phone at 801-538-7370, by FAX at 801-538-7442, or by Internet E-mail at KAELYNANFINSEN@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Jerry Olds, Director

R655. Natural Resources, Water Rights.

R655-14. Administrative Procedures for Enforcement Proceedings Before the Division of Water Rights.

R655-14-1. Authority.

(1) These rules establish procedures for ~~[water]~~enforcement adjudicative proceedings ~~[as required by Utah Code Ann.]~~which may be commenced under Section 73-2-25~~[of the Utah Water and Irrigation Code, which authorizes].~~ Under Subsection 73-2-1(4)(g), the State Engineer, as the Director of the Utah Division of Water Rights, is required to make rules ~~[to implement]~~regarding ~~[the water]~~enforcement ~~[powers and duties of the State Engineer and Division of Water Rights]~~orders and the imposition of fines and penalties.

(2) The ~~[Division's]~~State Engineer's powers and duties include acting on behalf of the State of Utah to administer, ~~[under the supervision of the State Engineer]~~as the agency head of the Division of Water Rights, the distribution and use of all surface and ground waters within the state in accordance with statutory authority, including but not limited to ~~[Utah Code Ann.]~~Sections 73-2-1, 73-2-1.2, and 73-2-25.

R655-14-2. Application and Preamble.

(1) These rules are applicable statewide to the use of the waters of the state. Additional rules may be promulgated to address ~~[water]~~enforcement for specific hydrologic areas.

(2) The Division~~;~~ may issue an Initial Order for any violation of the Water and Irrigation Code as set forth in ~~[Utah Code Ann. Subsection~~s 73-1-1 through 73-5a]73-2-25(2)(a).

(3) Following the issuance of an Initial Order, the respondent may contest the Initial Order in a proceeding before the State Engineer or ~~[his]~~the appointed Presiding Officer. ~~[Water e]~~Enforcement adjudicative proceedings are not governed by the Utah Administrative Procedures Act as provided under ~~[Utah Code Ann.]~~Section 63-46b-1 and are not governed by ~~[Utah Admin. Code Sections]~~Rule R655-6~~[-1 through R655-6-20]~~ regarding informal proceedings before the Division of Water Rights.

(4) These rules shall be liberally construed to permit the Division to effectuate the purposes of Utah law.

R655-14-3. Purpose.

(1) These rules are intended to:

(a) Assure the protection of Utah's water and the public welfare by promoting compliance and deterring noncompliance with the statutes, rules, regulations, permits, licenses and orders administered and issued under the Division's authority by removing any economic benefit realized as a direct or indirect result of a violation; and

(b) Assure that the State Engineer assesses and imposes administrative fines and penalties lawfully, fairly, and consistently, which fines and penalties reflect:

(i) The nature and gravity of the violation and the potential for harm to Utah's water and the public welfare by the violation;

(ii) The length of time which the violation was repeated or continued; and

(iii) The additional costs which are actually expended by the Division during the course of the investigation and subsequent enforcement.

(c) Clarify the Division's authority to enforce the laws it administers under the State Engineer's supervision, and the rules, regulations, permits, and orders adopted pursuant to appropriate authority.

(2) The three elements of the statutorily provided penalties are intended to achieve different aims of equity and public policy. To achieve these aims, the following classes of penalties have been established by statute:

(a) Administrative fines are intended to remove the financial incentive of the violation by removing the economic benefit as well as imposing a punitive measure.

(b) Replacement of water is intended to make whole the resource and impacted water users, as far as this is possible, by requiring respondents to leave an amount of water undiverted or undiminished in the resource for use by others. The allowance of up to 200% replacement indicates the penalty can incorporate a punitive element, as appropriate.

(c) Reimbursement of enforcement costs is intended to make whole the state by requiring a violator to replace the public funds expended to achieve compliance with the law.

R655-14-4. Definitions.

(1) Terms used in this rule are defined in ~~[Utah Code Ann.]~~Section 73-3-24.

(2) In addition,

~~[(a)]~~"Administrative Cost" means a monetary sum assessed by the Presiding Officer for any expense incurred by the Division in investigating and stopping a violation of, or a failure to comply with, a law administered by the Division, or any rule, permit, license, or order adopted pursuant to the Division's authority.

~~—[(b)]~~(a) "Administrative Penalty" ~~[or "Administrative Fine"~~] means a monetary ~~[sum]~~fine or water replacement ~~[assessed]~~ordered by the Presiding Officer to be paid or accomplished by the respondent in response to a violation of, or a failure to comply with, a law administered by the ~~[Division]~~State Engineer, or any rule, regulation, license, permit or order adopted pursuant to the ~~[Division]~~State Engineer's authority. ~~["Administrative Penalty" and "Administrative Fine" may be used interchangeably.]~~

~~[(e)]~~(b) "Cease and Desist Order" (CDO) means a written order issued by the State Engineer or the Enforcement Engineer requiring a respondent to cease and desist ~~[his]~~violations and/or directing that positive steps be taken to mitigate any harm or damage arising from the violation, including ~~[the imposition]~~a notice of administrative penalties ~~[and administrative costs]~~to which a respondent may be subject. ~~[Cease and Desist Order]~~CDO's are further described in ~~[Utah Admin. Code.]~~Section R655-14-11. A CDO constitutes an Initial Order (IO), whether issued alone or in conjunction with a Notice of Violation (NOV).

~~[(d)]~~(c) "Consent Order" means an order issued by the Presiding Officer reflecting ~~[the]~~a stipulated and voluntary agreement between the parties concerning the resolution of ~~[the]~~an ~~[water]~~enforcement adjudicative proceeding. A Consent Order constitutes a Final Judgment and Order.

~~[(e)]~~(d) "Default Order" means an order ~~[that is]~~issued by ~~[a]~~the Presiding Officer after a respondent fails to participate or continue to participate in an enforcement proceeding~~[respond to an IO within the designated time frame]~~. A Default Order constitutes a Final ~~[Order and]~~ Judgment and Order.

~~[(f)]~~(e) "Distribution Order" means a written order from the State Engineer that includes any or all of the following:

(i) An interpretation of the water rights on a river system or other water source and procedures for the regulation and distribution of water according to those water rights;

(ii) A requirement of specific action or actions on the part of a water right owner or a group of water right owners to ensure that water is diverted, measured, stored, or used according to the water rights involved and that the diversion, storage, or use does not infringe on the rights of other water right owners;

(iii) A description of the hydrologic limitations of a river system or other water source and a plan based on the water rights of record designed to manage and maximize beneficial use of water while protecting the sustainability of the water source;

(iv) A requirement that reports be submitted to the Division as provided in ~~[Utah Code Ann.]~~Section 73-5-8.

(v) A regulation tag issued by the Division or by a Water Commissioner according to ~~[Utah Code Ann.]~~Section 73-5-3 and as defined in Section R655-15.

~~[(g)]~~(f) "Division" means the Division of Water Rights.~~["The terms State Engineer, Presiding Officer, or Division may be used interchangeably unless clearly indicated otherwise by the context of the sentence in which it appears.]~~

~~[(h)]~~(g) "Economic Benefit" means the benefit actually or potentially realized and/or a cost actually or potentially avoided by a violator as a result of ~~[the]~~unlawful activity defined as a violation in ~~[the]~~an IO.

~~[(i)]~~(h) "Enforcement Costs" ~~[are those costs defined in this rule at Utah Admin. Code]~~means a monetary sum ordered by the Presiding Officer to be paid by a respondent for any expense incurred by the State Engineer in investigating and stopping a violation of, or a failure to comply as defined herein. Enforcement costs are further defined in this

rule at Subsection R655-14-12(6). Collection of said costs is authorized at ~~[Utah Code Ann.]~~Subsection 73-2-26(1)(a)(iii).

(i) "Enforcement Engineer" means the State Engineer or an authorized delegate who may commence and prosecute an enforcement action pursuant to Subsection 73-2-25(2)(a).

(j) "Filed" means ~~timely submitted~~~~[submission of papers]~~ to the Division pursuant to ~~[Utah Admin. Code.]~~Subsection R655-14-8(3).

(k) "Files" means information maintained in the Division's public records~~[—files]~~, which may include both paper and electronic information.

(l) "Final Judgment and Order" means a final decision issued by the ~~[State Engineer]~~Presiding Officer on the whole or a part of an ~~[water-]~~enforcement adjudicative proceeding. This definition includes "Consent Orders" and "Default Orders."

(m) "Initial Administrative Penalty" means an administrative fine, a requirement to replace water unlawfully taken, and/or the enforcement costs required to be repaid as these are ~~[assessed]~~described and set forth in the Initial Order (IO) as ~~[authorized]~~required at ~~[Utah Code Ann.]~~Subsection ~~[73-2-26(1)(a)]~~73-2-25(2)(b)(ii). These penalties do not include accrued penalties for violations continuing past the date of the IO.

(n) "Initial Order" (IO) means a Notice of Violation and/or a Cease and Desist Order.

(o) "Issued" as it applies to an IO ~~[and]~~or a Final Judgment and Order means the document has been ~~executed by an authorized delegate of the State Engineer (in the case of an IO) or by the Presiding Officer (in other cases)~~ and deposited in the mail.

(p) "Knowing" or "Knowingly" as used in ~~[Utah Code Ann.]~~Section 73-2-26, means the same as the definition contained in ~~[Utah Code Ann.]~~Section 76-2-103.~~[—which is: a] A~~ person engages in conduct knowingly, or with knowledge with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(q) "License" means the express grant of permission or authority by the ~~[Division]~~State Engineer to carry on an activity or to perform an act, which, without such permission or authority, would otherwise be a violation of State law, rule or regulation.

(r) "Location" means the current~~[—]~~residential or business address of a party as recorded in the Division's files. If a current residential address is not available for an individual, "location" means an employment or business address if known, or nonresidential mailing address such as a Post Office Box or Rural Route, at which a party whose location information is being sought receives mail.

(s) "Mitigation" means ~~[to provide]~~compensation acceptable to the Division for injury caused by ~~[the]~~a stream channel or dam safety violation.

~~[(t)]~~"Mitigation Plan" means a document submitted to the Division by the respondent that identifies or proposes actions to provide mitigation.

~~—(u)](t)~~ "Noncompliance" or "Nonconformance" or "Failure to Comply" or "Violation" each means any act or failure to act which constitutes or results in:

(i) Engaging in an~~[y]~~ activity prohibited by, or not in compliance with, any law administered by the ~~[Division]~~State Engineer or any rule, license, permit or order adopted or granted pursuant to the ~~[Division]~~State Engineer's authority;

(ii) Engaging in an~~[y]~~ activity without a necessary permit or approval that is required by law or regulation;

(iii) The failure to perform, or the failure to perform in a timely fashion, anything required by a law administered by the ~~[Division]~~State Engineer or by a rule, license, permit or order adopted pursuant to the ~~[Division]~~State Engineer's authority.

~~[(v)](u)~~ "Notice of Violation" (NOV) means a written notice issued by the Enforcement Engineer that informs a respondent of Water and Irrigation Code violations. Notice of Violation is further described in ~~[Utah Admin. Code.]~~Section R655-14-11. A NOV constitutes an Initial Order (IO), whether issued alone or in conjunction with a Cease and Desist Order (CDO).

~~[(w)](v)~~ "Participate" means, in an enforcement proceeding that was commenced by an IO, to:

(i) Present relevant information to the Presiding Officer within the time period ~~[described]~~prescribed by statute or rule or order of the Presiding Officer for ~~submitting relevant information or requesting a hearing;~~ and/or

(ii) Attend a preliminary conference or hearing if a preliminary conference or hearing is scheduled and a notice is properly issued.

~~[(x)](w)~~ "Party" means the ~~[Division]~~State Engineer, an authorized delegate of the State Engineer, and/or the respondent(s).

~~[(y)](x)~~ "Permit" means an authorization, license, or equivalent control document issued by the ~~[Division]~~State Engineer to implement the requirements of any federally delegated program or Utah law administered or enforced by the ~~[Division]~~State Engineer.

~~[(z)](y)~~ "Person" means an individual, trust, firm, joint stock company, corporation (including a quasi-governmental corporation), partnership, association, syndicate, municipality, municipal or state agency, fire district, club, non-profit agency or any subdivision, commission, department bureau, agency, department or political subdivision of State or Federal Government (including quasi-governmental corporation) or of any interstate body and any agent or employee thereof.

~~[(aa)](z)~~ "Post Initial Order Penalty Adjustments" means those adjustments, in the form of increases or decreases, made by the Presiding Officer to the initial administrative penalties assessed in the IO ~~[by the Presiding Officer]~~in consideration of information pertaining to the violation.

~~[(ab)](aa)~~ "Presiding Officer" means the State Engineer or an authorized delegate of ~~[—persons appointed by]~~ the State Engineer~~[—or persons designated by the Division's rules, or statute, to conduct] who conducts an [water-]enforcement adjudicative proceeding.[—State Engineer, Presiding Officer, or Division may be used interchangeably unless clearly indicated otherwise by the context of the sentence in which it appears.]~~

~~[(ae)](ab)~~ "Record" means the official collection of all written and electronic materials produced in an~~[water]~~ enforcement ~~[adjudicative] proceeding[s]~~, including but not limited to the ~~[administrative action]~~IO, pleadings, motions, exhibits, orders and testimony produced during the adjudicative proceedings, as well as the files of the Division as defined herein~~[that took place during the proceeding]~~.

~~[(af)](ac)~~ "Respondent" means any person against whom the ~~[Division]~~Enforcement Engineer commences an enforcement action by issuing an IO.

~~[(ag)](ad)~~ "Requirement" means any law administered by the ~~[Division]~~State Engineer, or any rule, regulation, permit, license or order ~~[adopted]~~issued or granted pursuant to the ~~[Division]~~State Engineer's authority.

~~[(ah)](ae)~~ "State Engineer" is the Director and agency head of the Division of Water Rights in whom ultimate legal authority is vested~~[appointed as provided]~~ by ~~[Utah Code Ann.]~~Sections 73-2-1 and 73-2-1.2.~~[—The terms State Engineer, Presiding Officer, or Division~~

may be used interchangeably unless clearly indicated otherwise by the context of the sentence in which it appears.]

~~(ag)~~(af) "Unknowingly" or "Not Knowing" means the converse of the definition of "Knowingly" contained in [Utah Code Ann.] Section 76-2-103~~, which is: a~~. A person engages in conduct unknowingly, or without knowledge with respect to his conduct or to circumstances surrounding his conduct when he is unaware of the nature of his conduct or the existing circumstances. A person acts unknowingly, or without knowledge, with respect to a result of his conduct when he is unaware that his conduct is reasonably certain to cause the result.

~~(ah)~~(ag) "Water Commissioner" or "Commissioner" means a person appointed to distribute water within a water distribution system pursuant to [Utah Code Ann.] Section 73-5-1 and Section R655-15.

(ah) "Well" means an open or cased excavation or borehole for diverting, using, or monitoring underground water made by any construction method.

(ai) "Well driller" means a person with a license to engage in well drilling for compensation or otherwise.

(aj) "Well drilling" means the act of drilling, constructing, repairing, renovating, deepening, cleaning, developing, or abandoning a well.

R655-14-5. Other Authorities.

(1) Nothing in these rules shall limit the [Division]State Engineer's authority to take alternative or additional actions relating to the administration, appropriation, adjudication and distribution of the waters of Utah as provided by Utah law.

R655-14-8. Computation of Time.

(1) Computation of any time period referred to in these rules shall begin with the first day following the act that initiates the running of the time period. The last day of the time period computed is included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Division is closed, in which event the period shall run until the end of the business hours of the following business day. When the time period is less than seven (7) days, intervening days when the Division is closed shall be excluded in the computation.

(2) The [State Engineer]Presiding Officer, for good cause shown, may extend any time limit contained in these rules, unless precluded by statute. All requests for extensions of time shall be made by motion.

(3) [Papers]Documents required or permitted to be filed under these rules shall be filed with the Division, to the attention of the Presiding Officer or Enforcement Engineer, as may be required, within the time limits for such filing as ~~are~~ set by the [Division]Enforcement Engineer, the Presiding Officer, or other provision of law. Papers filed in the following manner shall be deemed filed as set forth:

(a) Papers hand delivered to the Division during regular business hours shall be deemed filed on the date of hand-delivery. Papers delivered by hand at times other than during regular business hours shall be deemed filed on the next regular business day when stamped received by the Division.

(b) Papers deposited in the U.S. mail shall be deemed filed on the date stamped received by the Division. In the event that no stamp by the Division appears, papers shall be deemed filed on the postmarked date. ~~[All papers shall show the date received by the Division.]~~

(c) Papers transmitted by facsimile, telecopier or other electronic transmission shall not be accepted for filing unless permitted in writing by the Presiding Officer, the Enforcement Engineer or by this rule.

R655-14-9. Filings Generally.

(1) Papers filed with the Division shall state the [Division]State Engineer Agency Action (SEAA) ~~and file~~ number, ~~if any,~~ the title of the proceeding, and the name of the respondent on whose behalf the filing is made.

(2) Papers filed with the Division shall be signed and dated by the respondent on whose behalf the filing is made or by the respondent's authorized representative. The signature constitutes certification that the respondent:

(a) Read the document;

(b) Knows the content thereof;

(c) To the best of ~~his~~the respondent's knowledge, represents ~~such~~that the statements therein are true;

(d) Does not interpose the papers for delay; and

(e) If ~~his~~the respondent's signature does not appear on the paper, authorized a representative with full power and authority to sign the paper.

(3) All papers, except those submittals and documents that are kept in a larger format during the ordinary course of ~~a party's~~ business, shall be submitted on an ~~8-1/2~~8.5 x 11-inch paper. All papers shall be legibly hand printed or typewritten.

(4) The Division may provide forms to be used by the parties.

(5) The original of all papers shall be filed with the Division with such number of additional copies as the Division may reasonably require.

(6) Simultaneously with the filing of any and all papers with the Division, the party filing such papers shall send a copy to all other parties, or their authorized representative to the proceedings, by hand delivery, or U.S. Mail, postage prepaid, properly addressed.

R655-14-10. Motions.

(1) A party may submit a request to the Presiding Officer for any order or action not inconsistent with Utah law or these rules. Such a request shall be called a motion. The types of motions made shall be those that are allowed under these Rules and the Utah Rules of Civil Procedure.

(2) Motions may be made in writing at any time before or after the commencement of a hearing, or they may be made orally during a hearing or a preliminary conference. Each motion shall set forth the grounds for the desired order or action and, if submitted in writing, state whether oral argument is requested. A written supporting memorandum, specifying the legal basis and support of the party's position shall accompany all motions.

R655-14-11. Options for Adjudicative Enforcement.

(1) The ~~Presiding Officer~~State Engineer may pursue any combination of the following administrative and judicial enforcement actions depending upon the circumstances and gravity of each case.

(a) Notice of Violation: a formal notice of a suspected violation issued in accordance with Section 73-2-25 which:

(i) Cites the law, rule, regulation, permit and/or order allegedly violated;

(ii) States the facts that form the basis for the [Division]State Engineer's belief that a violation has occurred;

(iii) States the administrative ~~penalty~~fine, ~~and~~enforcement costs, and/or other ~~penalty~~relief deemed appropriate by the Presiding Officer to which the respondent may be subject;

(iv) Specifies a reasonable deadline or deadlines by which the respondent:

(A) Shall ~~come into compliance~~ comply with the requirements described in the Notice of Violation, and/or

~~(B) Shall pay the administrative fine and enforcement costs, and/or~~

~~(B)(C)~~ Shall submit a written ~~mitigation~~ plan or proposal setting forth how and when ~~that the~~ respondent proposes to ~~achieve compliance~~ replace water taken without right.

(v) Informs the respondent:

(A) Of the right to file a timely written request for a hearing on ~~either~~ the alleged violation, the administrative ~~penalty~~ penalties defined ~~and cost or remedy imposed~~, or both;

(B) That the respondent must file said written request for a hearing with Division within seven (7) days after service of the Notice of Violation;

(C) That said written request shall strictly comply with R655-14-16;

(D) That said notice shall become the basis for a Final Judgment and Order of the ~~Division~~ Presiding Officer upon the respondent's election to waive participation or failure to timely respond or otherwise participate in a timely manner ~~the proceeding~~, and

(E) That the ~~Presiding Officer~~ Enforcement Engineer may treat each day's violation as a separate violation in describing the Initial Administrative Penalty under Subsection ~~73-2-26(1)(d)~~ 73-2-25(2)(b)(ii); that is, the administrative penalty continues to accrue each day from the time the ~~Notice of Violation is issued~~ violation begins until compliance is achieved.

(vi) Identifies the individual to whom correspondence and inquiries regarding the Notice of Violation should be directed;

(vii) States to whom and the date by which the administrative ~~penalty~~ fine and enforcement costs shall be paid if the respondent elects to waive or fails to request an adjudicative hearing in a timely manner and elects to pay the ~~penalty~~ fine and costs; and

(viii) States the ~~Division~~ State Engineer's authority to pursue further administrative or judicial enforcement action.

(b) Cease and Desist Order (CDO): an immediate compliance order issued pursuant to Section 73-2-25 either upon discovery of a suspected violation of the Water and Irrigation Code or in combination with a Notice of Violation, which:

(i) Cites the law, rule, license, permit, notice and/or order allegedly violated;

(ii) Describes the act or course of conduct ~~which~~ that is prohibited by the Cease and Desist Order;

(iii) Orders the respondent to immediately cease the prohibited act or prohibited course of conduct;

(iv) States ~~the mitigation~~ any action deemed necessary by the ~~State Engineer~~ Enforcement Engineer to confirm compliance and assure continued compliance;[-]

(v) Takes effect immediately upon issuance ~~the date issued~~ or within such time as specified by the ~~State Engineer~~ Enforcement Engineer in the ~~CEASE AND DESIST ORDER~~ CDO; and

(vi) States the ~~remedies, costs and penalties that the State Engineer may lawfully impose~~ administrative penalties to which the respondent may be subject for any violation of the ~~Cease and Desist Order~~ CDO.

(c) Court Action

(i) Civil: direct recourse to a court of competent jurisdiction either in addition to or in lieu of administrative action where:

~~(A)~~ (A) It is necessary to enforce a Final Judgment and Order and seek civil and/or administrative penalties

~~(B)~~ (B) An imminent threat to the public health, safety, welfare or environment exists which warrants injunctive or other emergency relief; or

~~(C)~~ (C) A pattern of continuous, significant violations exists such that administrative enforcement action alone is unlikely to achieve compliance; or

~~(D)~~ (D) The court is the most convenient or appropriate forum for resolution of the dispute.

(ii) Criminal: referral to the County Prosecutor or the Attorney General's Office for prosecution or criminal investigation where:

~~(A)~~ (A) The alleged act or failure to act may be defined as a criminal offense by S state law;

~~(B)~~ (B) Enforcement is beyond the jurisdiction or investigative capability of the ~~Division~~ State Engineer; or

~~(C)~~ (C) Criminal sanctions may be appropriate.

(d) Miscellaneous - other enforcement options may be pursued to achieve compliance. Additional options include, but are not limited to:

(i) Joint actions with, or referrals to, other federal, state or local agencies;

(ii) Direct legal or equitable actions in state or federal court; and/or

(iii) Denial, suspension or revocation of ~~state grants or required~~ state-granted licenses, approvals permits or certifications.

(2) Unless otherwise stated, all ~~enforcement actions~~ notices, orders and judgments are effective upon issuance ~~the date issued~~.

(3) Combinations of enforcement actions are not mutually exclusive and may be concurrent and/or cumulative.

(4) ~~All IO's shall become final if not contested within 14 days after the date issued~~ An IO may be incorporated into a Default Order if the respondent fails to participate as defined herein.

~~(5) The date of issuance of an IO is the date the IO is mailed.~~

~~(6) A respondent who fails to timely contest an IO waives any right of reconsideration of the Final Judgment and Order per Utah Admin. Code R655-14-25.~~

R655-14-12. ~~Assessment of~~ Administrative Penalties and Administrative Costs.

(1) Pursuant to ~~Utah Code Ann.~~ Sections 73-2-1[-] and 73-2-25[- and 26], and these rules, the ~~Presiding Officer~~ Enforcement Engineer ~~may~~ shall assess the initial administrative penalties, which may include an administrative fine, a requirement to replace water and the reimbursement of ~~administrative~~ enforcement costs to which the respondent may be subject for any violation ~~of the Water and Irrigation Code~~ as set forth in ~~Utah Code Ann.~~ Subsection 73-2-25(2)(a) ~~s73-1-1 through 73-5a et seq.~~ Such penalties and costs may be assessed either before or after a hearing.

(2) No penalty shall exceed the maximum penalty allowed by State law for the violation(s). ~~The maximum administrative penalty that the Presiding Officer has authority to impose is determined by reference to the civil penalty provision of Utah Code Ann.~~ Subsection 73-2-26(1), as may be amended.

(3) Each day ~~which the~~ a violation is repeated, continued or remains in place, constitutes a separate violation. ~~The Presiding Officer may assess an administrative penalty, not to exceed five thousand dollars (\$5,000) for each knowing violation or one thousand dollars (\$1,000) for each unknowing violation.~~

(4) The penalty imposed shall begin on the first day the violation occurred, and may ~~continue~~ continue to accrue through and including the day the Notice of Violation[-] and/or Cease and Desist Order is issued, or the Final Judgment and Order is issued, or until compliance is achieved.

- (5) The amount of the penalty shall be calculated based on:
- The value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;
 - The gravity of the violation, including the economic injury or impact to others;
 - Whether the respondent [~~subject to fine or replacement~~] attempted to comply with the State Engineer's orders; and
 - The respondent's economic benefit from the violation.
- (6) [~~Administrative~~] Enforcement costs, interest, late payment charges, costs of compliance inspections, and collection costs may be assessed in addition to the administrative [~~penalty~~] fine. These include:
- [~~Administrative~~] Enforcement costs: Costs for [~~F~~] time spent by [~~water enforcement~~] Division staff, supervisors, the Presiding Officer, and personnel of the Attorney General's Office, at the full cost of [~~the~~] each employee's hourly rate, including salary, benefits, overhead and other directly related costs.
 - Late payment charges: [~~due~~] Costs accrued at the monthly percentage rate assessed by the Utah [~~Division of Finance~~] Department of Administrative Services, Office of Debt Collections.
 - Compliance inspection[s] costs: [~~based on~~] Time spent by Division staff [~~time~~] at the full cost of [~~the~~] each employee's hourly rate, including salary, benefits, overhead and other directly related costs.
 - Collection costs: [~~a~~] Actual collection costs.
- (7) The [~~Division~~] State Engineer may report the total amount of administrative fines and/or [~~administrative~~] enforcement costs assessed to consumer reporting agencies and pursue collection as provided by Utah law.
- (8) Any monies collected under [~~Utah Code Ann.~~] Section 73-2-26 and these rules shall be deposited into the General Fund.

R655-14-13. Replacement [~~and Mitigation~~] of Water.

- (1) In addition to administrative fines and enforcement costs, the Enforcement Engineer may impose and the Presiding Officer [~~in accordance with Utah Code Ann. Sections 73-2-1, 73-2-25 and 73-2-26 and these rules,~~] may order the respondent to [~~mitigate damages caused by the violation and/or~~] replace up to 200 percent of [~~the~~] water unlawfully taken in accordance with Section 73-2-26.
- (2) The Presiding Officer may [~~require~~] order actual replacement of water after:
- [~~a~~] A respondent fails to request judicial review of a [~~f~~] Final Judgment and [~~o~~] Order issued under [~~Utah Code Ann.~~] Section 73-2-25; or
 - [~~the e~~] Completion of judicial review, including any appeals.
- (3) Pursuant to [~~Utah Code Ann.~~] Section 73-2-26, [~~the Presiding Officer shall consider,~~] and before imposing or ordering replacement of water, the Enforcement Engineer and the Presiding Officer shall consider the following factors:
- The value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;
 - The gravity of the violation, including the economic injury or impact to others;
 - Whether the respondent attempted to comply with the State Engineer's orders; and
 - The respondent's economic benefit from the violation.
- (4) The Enforcement Engineer may require and the Presiding Officer may order the respondent to submit a [~~mitigation~~] plan to replace [~~groundwater or surface~~] water, which shall be submitted in writing and contain the following information:
- The name and mailing address of the respondent or persons submitting the plan;

- The [~~ease~~] State Engineer Agency Action (SEAA) number [~~the Division~~] assigned to the IO [~~which is the basis of the mitigation plan~~];
 - Identification of the water [~~rights~~] right(s) [~~or~~] and property for which the [~~mitigation~~] water replacement plan is proposed;
 - A description of the [~~mitigation~~] water replacement plan; and
 - Any information that assists the [~~State~~] Enforcement Engineer in evaluating whether the proposed [~~mitigation~~] water replacement plan is acceptable.
- (5) [~~If the mitigation plan is submitted for the purpose of replacing water,~~] The factors the [~~State~~] Enforcement Engineer or Presiding Officer may consider to determine if the plan is acceptable include, but are not limited to:
- Whether the [~~mitigation~~] plan provides for the respondent to forgo use of a vested water right owned or leased by [~~him~~] the respondent until water is replaced to the [~~Presiding Officer's is satisfaction~~] extent required in the IO or ordered in the Final Judgment and Order;
 - The reliability of the source of replacement water over the term in which it is proposed to be used under the [~~mitigation~~] plan; and
 - Whether the [~~mitigation~~] plan provides for monitoring and adjustment as necessary to protect vested water rights.
- (6) As provided in [~~Utah Code Ann.~~] Section 73-2-26, water replaced shall be taken from water [~~that~~] to which the respondent [~~subject to the order requiring replacement~~] would be entitled [~~to use~~] during the replacement period.
- (7) In accordance with [~~Utah Code Ann.~~] Subsection 73-2-26(5)(a), or any other statutory authority, the Division may record any order requiring water replacement in the office of the county recorder where the place of use or water right is located. Any subsequent transferee of such property shall be responsible for complying with the requirements of said order.
- (8) If the mitigation plan is submitted for the purpose of restoring a natural stream channel altered in violation of Section 73-3-29, the factors the State Engineer may consider to determine if the plan is sufficient include, but are not limited to:
- Whether the mitigation plan provides for reasonable means of replacing natural vegetation injured by the unlawful stream channel alteration;
 - Whether the mitigation plan provides for a reasonable means to restore the bed and bank of the natural stream channel to its condition prior to the alteration;
 - Whether the mitigation plan will not impair vested water rights;
 - Whether the mitigation plan unreasonably or unnecessarily affects any recreation use or the natural stream environment;
 - Whether the mitigation plan unreasonably or unnecessarily endangers aquatic wildlife;
 - Whether the mitigation plan unreasonably or unnecessarily diminishes the natural channel's ability to conduct high flows; and
 - Whether the mitigation plan uses generally accepted and appropriate engineering methods.]

R655-14-14. Procedures For Determining [~~The Amounts of~~] Administrative Penalties, Enforcement Costs and Water Replacement.

- (1) An administrative fine shall not exceed the maximum amounts established by statute at Subsection 73-2-26 (1), as such may be amended.

~~[(4)](2)~~ For ~~[water rights]~~ violations per ~~[Utah Code Ann.] Subsections 73-2-25(2)(a)(i) through (vi)~~, the following procedures shall be employed:

(a) Administrative Fines: This penalty shall be based primarily on the actual economic benefit estimated to result or potentially to result from the violation. The economic benefit may come in the form of a direct economic benefit as income derived directly from the unlawful activity ~~[and]~~ or it may come in the form of avoided costs that would otherwise be incurred in order to comply with a specific statute, rule, notice or order from the State Engineer. The administrative fine assessment procedure used (direct economic benefit or avoided costs) will be that which produces the greater fine. In order to implement the punitive intent of this penalty, a multiplier is to be calculated and applied to the estimated actual direct economic benefit or avoided costs.

(i) "Direct Economic Benefit" Initial Administrative Fine Calculations. The initial administrative fine shall be calculated in the following manner:

(A) The daily economic benefit is equal to the gross income that is or could potentially be realized from the violation (without regard for production costs, taxes, etc.) divided by the number of days of violation. For water right violations, the daily economic benefit is calculated using the gross income through a full period of beneficial use, divided by the number of days in the period of beneficial use.

(B) The daily administrative fine ~~[amount]~~ is equal to the product of the daily economic benefit and the multiplier to be calculated as described in paragraph (iii) below.

(C) The initial administrative fine ~~[shall be]~~ is equal to the product of the daily administrative fine and the number of days of continuing violation to the date [of] the IO is issued, but shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(D) The total initial administrative fine will have a maximum value of four times the direct economic benefit or the statutory maximum fine ~~[\$1,000 per day for an unknowing violation or \$5,000 per day for a knowing violation]~~, whichever is less.

(ii) The multiplier for penalties based on direct economic benefit shall be calculated utilizing the following statutory considerations. (Statutorily required considerations relative to the quantity of water taken and the gravity and impact of the violation are accommodated in the calculations of the economic "benefit" and "injury.")

- (A) Whether the violation was committed knowingly or unknowingly;
- (B) The economic injury to others;
- (C) The length of time over which the violation has occurred; and
- (D) The violator's efforts to comply.

(iii) The penalty multiplier is the sum of the points calculated using [the following table] Table 1:

TABLE 1

DIRECT ECONOMIC BENEFIT PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing1.00
Unknowing0.00
Economic injury to others	
g Great h er than \$15,000	1.00
\$10,000 to \$1 4 5,0000.75
+ Less than \$ 9,999 10,000 or injury is not measurable or there is no evidence others suffered economic injury	0.50
Length of violation	
Three (3) or more years of violation	1.00

More than one (1), but less than three (3) years of violation0.75
One (1) year or less of violation0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited but ineffective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator fully complied prior to issuance of Initial Order	0.00

~~[(iii)](iv)~~ "Avoided Cost Economic Benefit" Initial Administrative Fine Calculation: ~~[Because all enforcement activities for violations under Utah Code Ann. Section 73-2-25(2)(a)(iii) through (v), must statutorily result from violation of a prior notice or order.] In some cases, including but not limited to violations under Subsections 73-2-25 (2)(a) (iii) through (vii), an economic benefit [will often] may result from an avoided cost of compliance with a notice or order from the State Engineer, or from failure to obtain a necessary approval, permit or license. [Statute provides for a] In the case of a failure to comply with a prior notice or order, the daily administrative fine commences with the day following the compliance date in the notice or order [being counted as the first day of violation]. In the event of a failure to obtain a necessary approval, permit or license, the period of violation is deemed to begin on the first day the unauthorized activity is commenced. The economic benefit and daily administrative fine for an "avoided cost economic benefit" shall be calculated in the following manner:~~

(A) The total realized economic benefit is equal to the ~~[estimated]~~ highest calculated avoided costs of failing to implement specific actions required by a statute, rule, notice or order from the State Engineer.

(B) The daily administrative fine is ~~[initially calculated as equal to the product of [\$100.00]\$20 or 5[-00]% of the total realized economic benefit, whichever is greater, and the penalty multiplier to be calculated as described in paragraph [(iv)](vi), below.~~

(C) The initial administrative fine ~~[shall be]~~ is equal to the product of the daily administrative fine and the number of days of continuing violation preceding the date of the IO, but shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(D) The total initial administrative fine will have a maximum value of three times the economic benefit or the statutory maximum fine ~~[\$1,000 per day for an unknowing violation or \$5,000 per day for a knowing violation]~~, whichever is less.

~~[(iv)](v)~~ The statutory considerations applicable to producing the multiplier for an avoided cost economic benefit are: (Statutorily required considerations relative to the quantity of water taken and the gravity and impact of the violation are accommodated in calculations of the economic "benefit" and "injury.")

- (A) Whether the violation was committed knowingly or unknowingly;
- (B) The economic injury to others; and
- (C) The violator's efforts to comply.

(vi) The penalty multiplier is the sum of the points resulting from [the following table] Table 2:

TABLE 2

AVOIDED COST ECONOMIC BENEFIT PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing1.00

Unknowing	0.00
Economic injury to others	
[g] Greater than \$15,000.	1.00
\$10,000 to \$1[4]5,000	0.75
[f] Less than \$[9,999]10,000 or injury is not measurable or there is no evidence others suffered economic injury	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited but ineffective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator fully complied prior to issuance of Initial Order	0.00

(b) Replacement of Water: This penalty will be initially calculated as the product of 100% of the amount unlawfully taken [times] and the penalty multiplier previously calculated, but not to exceed 200% of that unlawfully taken. If replacement of water unlawfully taken is deemed to be [not] infeasible by the Enforcement Engineer or the Presiding Officer, this penalty will not be further considered.

(c) Reimbursement of Enforcement Costs: This penalty will be initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the IO.

[~~2~~](3) For violations related to unlawful natural stream channel alteration or dam safety regulations per [~~Utah Code Ann.~~] Subsections 73-2-25(1)(a)(vi) through and (vii), the following procedures shall be employed:

(a) Daily Administrative Fine: All enforcement activities for unlawful natural stream alteration or dam safety violations must statutorily result from violation of a prior notice or order. Statute provides for a daily administrative fine with the day following the compliance date in the notice/order being counted as the first day of violation. The calculated daily administrative fine would apply to violations continuing beyond the compliance date set forth in the notice or order. The economic benefit and daily administrative fine shall be calculated in the following manner:

(i) For stream alteration and dam safety violations, there may be a direct economic benefit, or there may be an avoided cost economic benefit [is typically equal to the avoided costs] deriving from:

(A) Initiating an activity without the benefit of proper permitting and/or,

(B) Failing to implement specific actions required by a notice, order or permit from the State Engineer.

(ii) The daily administrative fine is initially calculated as [equal to the product of [~~\$100~~]\$20 or 5[~~00~~]% of the total realized economic benefit, whichever is greater, [times] and the multiplier to be calculated as described in paragraph (iii), below[~~, but not to exceed the statutory maximum (\$1,000 per day for an unknowing violation or \$5,000 per day for a knowing violation)~~].

(iii) The penalty multiplier is calculated as the sum of the points [resulting] from [the following tables] Table 3 or Table 4, as may be appropriate:

TABLE 3

STREAM ALTERATION PENALTY MULTIPLIER	
CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00

Gravity of violation	
Natural stream environment harmed to significant levels not readily reversible by mitigation efforts	1.00
Natural stream environment harmed to moderate levels partially reversible by mitigation efforts	0.75
Natural stream environment harmed to minor levels [R] readily reversible by mitigation efforts.	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made no reasonable or effective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator achieved full compliance prior to issuance of Initial Order	0.00

TABLE 4

DAM SAFETY PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Gravity of violation	
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam:	
1) [F] Related to building, enlarging or substantially altering same without prior approval or authorization; OR	
2) [A] Addressing an existing unsafe condition	1.00
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam:	
1) [A] Addressing a developing unsafe condition OR	
2) [F] Requiring monitoring or critical dam performance indicators; OR	
[F] Failure to prepare and file acceptable required operational documents, OR	
[F] Failure to comply with a notice or order for a low-hazard dam related to building, enlarging or substantially altering same without prior authorization	0.75
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam related to routine operation or maintenance activities, OR	
[F] Failure to comply with a notice or order for a low-hazard dam to address an existing or developing unsafe condition	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited reasonable or effective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator achieved full compliance prior to issuance of Initial Order	0.00

(iv) The total administrative fine shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(b) Reimbursement of Enforcement Costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(3) For violations under Subsection 73-2-25(2)(a)(iii) related to failure to submit a report required by Section 73-3-25, the following procedures shall be employed:

(a) The daily administrative fine is equal to \$5.00.

(b) The number of days of continuing violation commences 90 days after the day on which the well driller license lapses.

(c) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation to the date the IO is issued.

(d) The total administrative fine shall not exceed the product of the daily administrative fine and the number of days of continuing violation.

(e) Reimbursement of enforcement costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(4) For violations under Subsection 73-2-25(2)(a)(ix) related to engaging in well drilling without a license required by Section 73-3-25, the following procedures shall be employed:

(a) The direct economic benefit is equal to the gross income that is or could potentially be realized (without regard for production costs, taxes, etc.) from engaging in well drilling (as defined herein) without a license.

(b) The total initial administrative fine is equal to the product of the direct economic benefit resulting from the violation and the penalty multiplier described in paragraph (c) below.

(c) The penalty multiplier is calculated as the sum of the points from Table 5.

TABLE 5

WELL DRILLING PENALTY MULTIPLIER

CONSIDERATION/ CRITERIA . . .	MULTIPLIER POINTS
<u>Knowing or unknowing violation</u>	
Knowing	1.50
Unknowing	1.00
<u>Gravity of Violation</u>	
New well construction	1.00
Deepening a well	0.80
Renovating a well	0.60
Abandoning a well	0.40
Cleaning/developing a well	0.20

(d) The total administrative fine shall not exceed the product of the direct economic benefit and the penalty multiplier.

(e) Reimbursement of enforcement costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(3)(5) Post-Initial Order penalty adjustments: Subsequent to issuance of the IO, the Presiding Officer may make adjustments to the initial administrative fine[;] the requirement for replacement of water unlawfully taken[;] requirements [for mitigation of the effects of unlawful natural stream channel alterations or] pertaining to violations of stream channel alteration or dam safety regulations[;] and/or the requirement for reimbursement of enforcement costs. Such adjustments may be based on one or more of the following considerations:

(a) Errors or Omissions in Calculation of [the]an Initial Administrative Penalty: If [the violator or Division can] shown by acceptable evidence or testimony that any fact used in calculation of the economic benefit, of the quantity of water unlawfully taken, or of the penalty multiplier was in error, or that a significant fact or group of facts was omitted from consideration, the Presiding Officer shall recalculate the initial administrative penalties taking consideration of the corrected or additional fact(s).

(b) Reduction in Penalty Multiplier: The penalty multiplier used in calculating the Initial Administrative [Fine]Penalties may be reduced according to [the table shown]Table 6 [below-]on the basis of the [violator]respondent's efforts to comply after receiving the IO.

TABLE 6

PENALTY MULTIPLIER REDUCTION

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
<u>[Violator]Respondent's efforts to comply with the Initial Order</u>	
<u>[Violator]Respondent has made extraordinary efforts to successfully achieve full and prompt compliance with the IO.</u>	1.00
<u>[Violator]Respondent has made efforts to successfully achieve full and prompt compliance with the IO, but these efforts are not extraordinary</u>	0.50
<u>[Violator]Respondent has made efforts that achieve full compliance with the IO, but the efforts were neither extraordinary nor prompt</u>	0.25
<u>[Violator]Respondent has made no efforts to comply or has made efforts that fail to achieve full compliance with the IO</u>	0.00

If the Presiding Officer determines that the penalty multiplier should be reduced according to the table above, the appropriate number of points will be subtracted from the penalty multiplier used in calculating the initial administrative penalty and the penalty will be recalculated with the new multiplier.

(c) Failure to take reasonable and effective measures to achieve full and prompt compliance with the requirements of the IO will allow the daily administrative fines to continue to accrue as provided in rule at [Utah Admin. Code]Subsection R655-14-12(4) until full compliance is achieved.

(d) Adjustments to recovery of enforcement costs: (ii)(i) If [the violator can] shown by acceptable evidence or testimony that any expense incurred by the [Division]State Engineer and assessed for reimbursement resulted from activities not pertinent to the violation, the Presiding Officer may reduce that portion of the [initial]reimbursement [penalty]requirement accordingly.

(iii)(ii) Pursuit of an enforcement action after issuance of the IO will continue to require the expenditure of varying amounts of staff time and may require acquisition and analysis of special data or information. Such costs may be added to the initial reimbursement requirement, specifically including all costs incurred that are unique to the [particular]enforcement action under consideration.

(e) Mitigating Factors: Other factors which the Presiding Officer may consider in amendment of initial penalties for incorporation into a Final Order or Consent Order may include, as appropriate:

(i) Ability to pay: This factor will be considered only if raised by a [R]respondent and only if the [R]respondent provides all necessary information to evaluate the claim. The burden to demonstrate inability to pay rests solely on the [R]respondent. The Presiding Officer shall disregard this factor if a [R]respondent fails to provide sufficient or persuasive financial information.

If it is determined that a [R]respondent cannot afford the full monetary penalties[initial administrative fine or other initial penalty] prescribed by this rule[without suffering financial bankruptcy], or if it is determined that payment of all or a portion of the monetary [fines or] penalties will preclude the [R]respondent from achieving compliance or from carrying out remedial measures which are deemed more important than the [deterent]deterrent effect of the [administrative]monetary penalties, the following options may be considered by the Presiding Officer:

(A) A delayed payment schedule with full payment of monetary penalties to be made at a date not exceeding 180 days from the date the Final Judgment and Order is issued; or

~~(B) An installment payment plan with a reasonable rate of interest; or~~

~~(C)(B) A direct reduction of the [initial administrative fines and/or] monetary penalties, [but only as a last recourse] which reduction is deemed by the Presiding Officer to be consistent with achieving the purposes of the enforcement action and the aims of equity and justice.~~

~~(C) A portion of the monetary penalties may be suspended with conditions as determined by the Presiding Officer, which suspension is deemed by the Presiding Officer to be consistent with achieving the purposes of the enforcement action and the aims of equity and justice. Failure by a respondent to adhere to the conditions of the suspension may result in an Order of reinstatement of any part of the suspended monetary penalties, which will be due and payable immediately upon reinstatement.~~

R655-14-15. Procedures for ~~(Commencing an) Conducting~~ Adjudicative Enforcement ~~(Action) Proceedings.~~

(1) The procedures for ~~(water enforcement) conducting~~ adjudicative ~~(enforcement) proceedings~~ are as follows:

(a) In proceedings initiated by an IO, the Presiding Officer shall issue a default order unless the respondent does one of the following within fourteen (14) days ~~(in response to service of the notice) of the date the IO is issued:~~

(i) ~~(Ceases) Satisfies all requirements of the IO, including but not limited to ceasing the violation(s), [and pays] full payment of all the administrative [penalty] fines, reimbursement of the State Engineer's enforcement [and] costs in full, and submission of any required water replacement plan; or,~~

(ii) Files with the Division a timely and proper written response to the IO ~~(within the fourteen (14) day time period)~~ but waives a hearing and submits ~~(its) the case upon the record. Submission of a case without a hearing does not relieve the respondent from the necessity of providing the facts supporting [his] the respondent's burdens, allegations or defenses; or~~

(iii) Files with the Division a timely and proper written response to the IO, having timely filed a [and] request[s] for a hearing as provided in the IO and in [Utah Admin. Code] Section R655-14-16.

(b) Within a reasonable time after the close of an ~~(water) enforcement adjudicative proceeding~~, the Presiding Officer shall issue a written and signed Final Judgment and Order, including but not limited to:

(i) ~~(S) A statement of law and jurisdiction;~~

(ii) ~~(S) A statement of facts;~~

(iii) ~~(Explanation) An identification of the confirmed [W] violation(s);~~

(iv) ~~(An) [O]rder setting forth actions required of the respondent(s);~~

(v) A notice of the option to request reconsideration and the right to petition for judicial review, except as such are waived in a Consent Order;

(vi) The time limits for requesting reconsideration or filing a petition for judicial review, except as such are waived in a Consent Order; and

(vii) Other information the ~~(State Engineer) Presiding Officer~~ deems necessary or appropriate.

(c) The Presiding Officer's Final Judgment and Order shall be based on the ~~(facts appearing in the Division's files and/or on the facts presented in evidence at any hearings or other adjudicative proceedings) record, as defined in this rule, or, in the case of a Consent Order, on the stipulation accepted by the parties and the Presiding Officer.~~

(d) A copy of the Presiding Officer's Final Judgment and Order shall be promptly mailed to each of the parties.

R655-14-16. Request for Hearing.

(1) Regardless of any other provision of the general laws to the contrary, all requests for a hearing shall be in writing and shall be filed with the Division within seven (7) calendar days of the date the IO [s issuance] was issued.

(2) The request for a hearing shall state clearly and concisely the specific ~~(issues) facts~~ that are in dispute, the supporting facts, the relief sought, the ~~(permit or order involved) State Engineer Agency Action (SEAA) number,~~ and any additional information required by applicable statutes and rules.

(3) The Presiding Officer may, upon ~~(his) the Presiding Officer's~~ own initiative or upon the motion of any party, order any party to file a response or other pleading, and further permit either party to amend its pleadings in a manner just to all parties.

(4) The Presiding Officer ~~(may) shall,~~ if ~~(he determines) it is determined~~ a hearing is warranted, give all parties at least three (3) days notice of the date, time and place for the hearing. The Presiding Officer may grant requests for continuances for good cause shown.

(5) ~~(The respondent) Any party~~ may, by motion, request that a hearing be held at some place other than that designated by the Presiding Officer, due to disability or infirmity of any party or witness, or where justice and equity would be best served.

R655-14-17. General Requirements for Hearings.

(1) A hearing before a Presiding Officer is permitted in an ~~(water) enforcement adjudicative proceeding~~ if:

(a) The proceeding was commenced by an IO; and

(b) The respondent files a timely request for hearing that meets the requirements of ~~(Utah Admin. Code) Section R655-14-16;~~ and

(c) The respondent raises a genuine issue of material fact ~~(-); or~~

~~(d) The Presiding Officer determines that a hearing is required to serve the interests of equity or justice.~~

(2) No genuine issue of material fact exists if:

(a) The evidence ~~(gathered) presented to the Presiding Officer by the [Division] Enforcement Engineer and [the evidence] by the respondent [offered to the Presiding Officer are] is sufficient to establish the violation of the respondent under applicable law; and~~

(b) No ~~(other) evidence~~ presented by the respondent conflicts with or substantially counters the evidence the ~~(Presiding Officer) Enforcement Engineer~~ relied on when issuing ~~(an order) the IO.~~

(3) The Presiding Officer may make a decision without holding a hearing if:

(a) Presentation of testimony or oral argument would not advance the Presiding Officer's understanding of the issues involved;

(b) Delay would cause serious injury to the public health and welfare;

(c) Disposition without a hearing would best serve the public interest.

(4) If no hearing is held, the Presiding Officer may ~~(rely upon) evidence in the~~ issue a Final Judgment and Order in reliance upon the record, as defined in this rule, or may order a preliminary conference to supplement or clarify the record, [including but not limited to:

~~(a) Water commissioner reports or information from governmental sources;~~

~~(b) Affidavit(s) documenting the respondent's violation;~~

~~(c) Failure of the respondent to produce upon request of the Presiding Officer records documenting the respondent's water use, diversions, or stream alteration; or~~

~~—(d) Other applicable documentation.~~

(5) A ~~[party]~~respondent at any time may withdraw ~~[his]~~the respondent's request for a hearing~~[-, but t].~~ The withdrawal shall be filed with the Division, in writing, signed by the respondent or ~~[his]~~an authorized representative, and is deemed final upon the date filed.

R655-14-18. Preliminary Conference.

(1) The Presiding Officer may require the parties to appear for a preliminary conference prior to ~~[the]~~granting a request for a hearing or prior to the scheduled commencement of [the]a hearing or at any time before issuing a Final Judgment and Order.

(2) The purpose of a preliminary conference is to consider any or all of the following:

- (a) The simplification or clarification of the issues;
- (b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which shall avoid unnecessary proof;
- (c) The limitation of the number of witnesses or avoidance of similar cumulative evidence, if the case is to be heard;
- (d) The possibility of agreement disposing of all or any of the issues in dispute; ~~[and]or~~
- (e) Such other matters as may aid in the efficient and equitable disposition of the adjudicative enforcement proceeding.

(2) [At the initial preliminary conference prior to the hearing]If a request for hearing has been timely and properly filed and has not been denied, all parties shall prepare and exchange the following information at the initial preliminary conference:

- (a) Names and addresses of prospective witnesses including proposed areas of expertise for expert witnesses;
 - (b) A brief summary of proposed testimony;
 - (c) A time estimate of each witness' direct testimony;
 - (d) Curricula vitae (resumes) of all prospective expert witnesses.
- (3) The scheduling of a preliminary conference shall be solely within the discretion of the Presiding Officer.
- (4) The Presiding Officer shall give ~~[the respondent]~~all parties at least three (3) days notice of the preliminary conference.
- (5) The notice shall include the date, time and place of the preliminary conference.

R655-14-20. Procedures and Standards for Orders Resulting from Service of an Initial Order.

(1) Consent Order:
~~—(a) If the respondent substantially agrees with or does not contest the statements of fact in the IO, or if the parties agree to specific amendments to the statements of fact in the IO, [he]the parties may enter into a Consent Order by stipulating to the facts[;] and either or both of the following:~~

- ~~(i) Negotiated administrative penalties[;];~~
- ~~(ii) Negotiated replacement of water; or~~
- ~~(iii) [—and administrative]Negotiated reimbursement of enforcement costs.~~

~~(b) A [stipulation, judgment, and]Consent Order based on that stipulation, shall be prepared by the [Division]Enforcement Engineer for [the respondent's signature]execution by the parties. The executed Consent Order shall be reviewed by the Presiding Officer and, if found to be acceptable, will be signed and issued by the Presiding Officer.~~

~~(c) A Consent Order[s are]issued by the Presiding Officer is not subject to reconsideration or judicial review.~~

(2) Final Judgment and Order Without Hearing: If the respondent does not request a hearing or is not granted a request for a hearing, participates by attending a preliminary conference or otherwise presents

relevant information to the Presiding Officer, but ~~[does not reach an agreement with the Division or]is [unavailable]unable or unwilling to [sign a stipulation within 30 days after responding to the IO, and does not request a hearing]negotiate a stipulated Consent Order, the Presiding Officer shall issue a Final Judgment and Order based on [that participation]the record, as defined in this rule.~~

(3) Final Judgment and Order After Hearing: If the respondent timely and properly requests a hearing, the hearing request is granted, the respondent participates by attending all scheduled[~~a~~] preliminary conferences, and/or [participates—]by attending the hearing, but is unwilling or unable to negotiate a stipulated Consent Order, the Presiding Officer ~~[who conducts the hearing—]~~shall issue a Final Judgment and Order based upon the record, as defined in this rule.

(4) Default Order: The Presiding Officer may issue a Default Order if the respondent fails to participate as follows:

- (a) The respondent does not timely request a hearing ~~[or]and~~ fails to respond to the IO; or
- (b) After proper notice the respondent fails to attend a preliminary conference scheduled by the Presiding Officer~~[to consider matters which may aid in the disposition of the action]; or~~
- (c) After proper notice, the respondent fails to attend a hearing scheduled by the Presiding Officer~~[pursuant to a written request for a hearing].~~

(5) [If a respondent's request for a hearing is denied under Utah Admin. Code Section R655-14-17, the Presiding Officer shall issue a Final Judgment and Order based upon the information in the case record.]A respondent who fails to participate pursuant to an IO waives any right to request reconsideration of the Final Judgment and Order per Section R655-14-25, but may petition for judicial review per Section R655-14-29.

R655-14-21. Conduct of Hearings.

(1) ~~[Hearings shall be conducted informally as circumstances require.~~

~~—(2)—[All parties, authorized representatives, witnesses and other persons present at the hearing shall conduct themselves in a manner consistent with the standards and decorum commonly observed in Utah courts. Where such decorum is not observed, the Presiding Officer may take appropriate action including adjournment, if necessary.~~

~~[(3)](2) The Presiding Officer shall conduct the hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters, and have an oath or affirmation administered to all witnesses.~~

~~—(4) The Presiding Officer, based upon the IO, objections thereto, if any, and the evidence adduced at the hearing, shall determine the responsibility and administrative penalty and cost, if any, of the respondent under Utah Code Ann. Sections 73-2-25 and 26. Following determination of responsibility and penalty and cost, the Presiding Officer shall determine the acceptable periodic payment or alternative means of satisfaction of any violation amount, which shall be included in the Final Judgment and Order.]~~

R655-14-22. Rules of Evidence in Hearings.

(1) Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence.

(2) A party may call witnesses and present oral, documentary, and other evidence.

(3) A party may comment on the issues and conduct cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for hearing, and

as may affect the disposition of any interest which permits the person participating to be a party.

(4) A witness' testimony shall be under oath or affirmation.

(5) Any evidence may be presented by affidavit rather than by oral testimony, subject to the right of any party to call and examine or cross-examine the affiant.

(6) Relevant evidence shall be admitted.

(7) The Presiding Officer's decision may not be based solely on hearsay.

(8) Official notice may be taken of all facts of which judicial notice may be taken in Utah courts.

(9) All parties shall have access to public information contained in the Division's files and to all materials and information gathered in the investigation, to the extent permitted by law.

(10) No evidence shall be admitted after completion of a hearing or after a case is submitted on the record, unless otherwise ordered by the Presiding Officer.

(11) Intervention is prohibited.

(12) A respondent appearing before the Presiding Officer for the purpose of a hearing may be represented by a licensed attorney. ~~[A representative from the Division]~~The Enforcement Engineer shall present evidence before a Presiding Officer ~~[the Division's]~~supporting [evidence for its] the State Engineer's claim. At the State Engineer's discretion, a representative from the office of the Attorney General may also present ~~[the Division's]~~supporting evidence.

R655-14-23. Transcript of Hearing.

(1) Testimony and argument at the hearing shall be either recorded electronically or stenographically. The Division shall make copies of electronic recordings available to any party, upon written request. The fee charged for this service shall be equal to the actual costs of providing the copy. The Division is not responsible to supply any party with a transcript of ~~[the]~~a hearing.

(2) If any party shall cause to be produced a transcript of a hearing, a copy of said transcript shall be filed with the Division and provided to all other parties. By order of the Presiding Officer and with the consent of all parties, such written transcript may be deemed an official transcript.

~~[(2)]~~(3) Corrections [in the] to an official transcript may be made only to conform it to the evidence presented at the hearing. Transcript corrections, agreed to by opposing parties, may be incorporated into the record, if and when approved by the Presiding Officer, at any time during the hearing, or after the close of [evidence] the adjudicative proceeding. The Presiding Officer may call for the submission of proposed corrections and may determine the disposition thereof at appropriate times during the course of the proceeding.

R655-14-24. Consent Order.

(1) At any time prior to ~~[rendering]~~the Presiding Officer issuing a Final Judgment and Order, the parties may attempt to settle a dispute by stipulating to a Consent Order.

(2) Every Consent Order shall contain, in addition to an appropriate order:

(a) A ~~[n admission]~~ statement of facts accepted by the parties;

(b) A waiver of further procedural steps before the Presiding Officer and of the right to judicial review; and

(c) A statement that the stipulation is enforceable as an order of the State Engineer ~~[and Division]~~ in accordance with procedures prescribed by law.

(3) The Consent Order may contain a statement that signing the Consent Order is for settlement purposes only and does not constitute

an admission by any party that the law or rules have been violated as alleged in the IO.

(4) When issued by the Presiding Officer, a Consent Order constitutes a Final Judgment and Order, effective on the date issued.

R655-14-25. Reconsideration.

(1) Within 14 days after the Presiding Officer issues a Final Judgment and Order, any party may file a written request for reconsideration ~~[with the Division,]~~ stating the specific grounds upon which relief is requested.

(2) Unless otherwise provided by statute, the filing of ~~[the]~~a request for reconsideration is not a prerequisite for seeking judicial review of the order.

(3) The request for reconsideration shall be filed with the Division to the attention of the Presiding Officer and one copy shall be mailed to each party by the ~~[person making]~~party filing the request.

(4) The Presiding Officer ~~[shall]~~may issue a written order granting ~~[the request]~~ or denying the request for reconsideration. It is not required that the written order explain the grounds for the Presiding Officer's decision.

(5) If the Presiding Officer does not issue an order granting a request for reconsideration within 14 days after [the filing of the request] [the date it is filed with the Division], the request ~~[for reconsideration]~~ shall be considered denied.

(6) A Final Judgment and Order in the form of a Consent Order or a Default Order is not subject to a request for reconsideration under this rule.

R655-14-26. Setting Aside a Final Judgment and Order[s].

(1) On the motion of any party or on a motion by the Presiding Officer, the Presiding Officer may set aside a Final Judgment and Order ~~[,]~~ on any reasonable grounds, including but not limited to the following:

(a) The respondent was not properly served with an IO;

(b) The order has been replaced by a judicial order that covers the same violation and time period;

(c) A rule or policy was not followed when the Final Judgment and Order was issued;

(d) Mistake, inadvertence, excusable neglect;

(e) Newly discovered evidence which by due diligence could not have been discovered before the Presiding officer issued the Final Judgment and Order; or

(f) Fraud, misrepresentation or other misconduct of an adverse party;

(2) ~~[The]~~A motion to set aside a final order shall be made in a reasonable time and not more than three (3) months after the Final Judgment and Order was issued.

(3) The ~~[Division]~~Presiding Officer shall notify the ~~[respondent]~~parties of the [Presiding Officer's intent to set the order aside] receipt and consideration of a motion to set aside a final order by ~~[serving the respondent with]~~ issuing a notice to all parties, including therewith a copy of the motion.

(4) Any party opposing a motion to set aside a final order may submit information within the time period to be established by the Presiding Officer's notice of the motion.

~~[(4)]~~(5) [If after serving the respondent with a notice] After consideration of the motion to set aside an order and any information received from the parties, the Presiding Officer [determines the order shall be set aside, the Division shall notify the respondent] shall issue an order granting or denying the motion, and provide a copy of the order to all parties.

R655-14-27. Amending Administrative Orders.

(1) ~~[F]~~On the motion of any party or of the Presiding Officer, the Presiding Officer may amend an IO or Final Judgment and Order for ~~[reasons]~~reasonable cause shown, including but not limited to the following:

(a) A clerical mistake ~~[was]~~made in the preparation of the order; or

(b) The time periods and alleged violation(s) covered in the order overlap the time periods and alleged violation(s) in another order for the same ~~[participants]~~respondents.

(2) A motion by any party to amend an order shall be made in a reasonable time and, if to amend a Final Judgment and Order, not more than three (3) months after the Final Judgment and Order was issued.

~~[(2)](3)~~ The ~~[Division]~~Presiding Officer shall notify the ~~[respondent]~~parties of the ~~[Presiding Officer's intent]~~receipt and consideration of a motion to amend ~~[the]~~an order by ~~[serving the respondent with]~~issuing a notice. The notice shall include a copy of the motion.

(4) Any party opposing a motion to amend an order may submit information within the time period to be established by the Presiding Officer's notice of the motion.

~~[(3)](5)~~ ~~[If the respondent is served with notice]~~After considering a motion to amend an order and any relevant information received from the parties, the Presiding Officer shall advise the parties of his determination. If the Presiding Officer determines that the order shall be amended, the ~~[Division]~~Presiding Officer shall ~~[provide a copy of the amended order to the respondent]~~issue the amended order to all parties.

R655-14-28. Disqualification of Presiding Officers.

(1) A Presiding Officer shall disqualify himself from performing the functions of the Presiding Officer regarding any matter in which he, his spouse, or a person within the third degree of relationship to either of them or the spouse of such person:

(a) Is a party to the proceeding, or an officer, director, or trustee of a party;

(b) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented, a party concerning the matter in controversy;

(c) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(d) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

(e) Is likely to be a material witness in the proceeding.

(2) A Presiding Officer is also subject to disqualification under principles of due process and administrative law.

(3) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, ~~[Utah Code Ann.]~~Section 67-16-1 et seq.

(4) A motion for disqualification shall be made first to the Presiding Officer. If the Presiding Officer is appointed, any determination of the Presiding Officer upon a motion for disqualification may be appealed to the State Engineer.

R655-14-29. Judicial Review.

(1) Pursuant to ~~[Utah Code Ann.]~~Section 73-2-25, a Final Judgment and Order may be reviewed by trial de novo by the district court:

(a) In Salt Lake County; or

(b) ~~[Of]~~In the county where the violation occurred.

(2) A respondent shall file a petition for judicial review of ~~[the]~~a Final Judgment and Order within 20 days from the day on which the order was ~~[served on that respondent]~~issued, or if a request for reconsideration has been filed and denied, within 20 days of the date of denial of the request for reconsideration.

(3) The ~~[Division]~~Presiding Officer may grant a stay of ~~[its]~~an order or other temporary remedy during the pendency of the judicial review on ~~[its]~~the Presiding Officer's own motion, or upon the motion of a party. The procedures for notice, for consideration of motions, and for issuing a determination shall be as set forth herein for a motion to set aside a Final Judgment and Order.

KEY: water rights, enforcement, ~~[fines]~~administrative penalties
Date of Enactment or Last Substantive Amendment: ~~[December 15, 2006]~~2008

Authorizing, and Implemented or Interpreted Law: ~~[73-3]~~73-2-1(4)(g); 73-2-25; 73-2-26; 73-3-25

◆ ————— ◆

Public Safety, Driver License R708-10 Classified License System

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31436

FILED: 05/15/2008, 13:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule needed to be changed to eliminate a provision that expired in 1992; remove the class M Operator requirements that was repealed by H.B. 72; and add new motorcycle restriction codes as per Section 53-3-208 to improve motorcycle safety. (DAR NOTE: H.B. 72 (2008) is found at Chapter 304, Laws of Utah 2008, and will be effective 07/01/2008.)

SUMMARY OF THE RULE OR CHANGE: Eliminated requirements that are no longer applicable and added new motorcycle restriction codes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-3-401

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** It will cost around \$5,000 to change the programming in order to get the correct motorcycle restriction on the driver license.

❖ **LOCAL GOVERNMENTS:** There is no fiscal impact on local government because they are not involved in issuing motorcycle permits.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There will be no impact on small businesses because they are not involved in issuing motorcycle permits.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost because of eliminating requirements that are

no longer applicable and for adding additional restriction codes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses because of these changes. Scott T. Duncan, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Nannette Rolfe, Director

R708. Public Safety, Driver License.

R708-10. Classified License System.

R708-10-2. Specifications for Utah License Classifications.

Class A Commercial Driver - (must be at least 18 years of age). Every person operating any combination of vehicles over 26,000 lbs. GVWR (Gross Vehicle Weight Rating) where the towed unit is more than 10,000 lbs. GVWR.

Class B Commercial Driver - (must be at least 18 years of age). Every person operating a straight truck or bus (single vehicle) more than 26,000 lbs. GVWR or any combination of vehicles over 26,000 lbs. GVWR where the towed unit is less than 10,001 lbs. GVWR.

Class C operator - (must be at least 21 years of age). Every person operating a vehicle or combination of vehicles less than 26,001 GVWR which transports amounts of hazardous materials requiring placarding or which transports more than 15 occupants including the driver, or which is used as a school bus. [

~~All commercial operators (Class A, B, or C), must obtain a commercial driver license no later than April 1, 1992.]~~

Class D operator - (must be at least 16 years of age). Every person operating vehicles not defined above except motorcycles. [

~~Class M operator (must be at least 16 years of age). Every person operating a two (2) or three (3) wheel motor driven cycle designed and registered for highway use.]~~

R708-10-4. Restrictions.

- A = None.
- B = Corrective lenses.
- C = Mechanical aid.
- D = Prosthetic aid.

E = Automatic transmission.

F = Outside mirror.

G = Daylight only.

I = Limit - other.

J = Other.

K = Restricted to intrastate operation of commercial vehicles.

L = Restricted to vehicles not equipped with air brakes.

O = 90 cc or less motorcycle.

U = a 3 wheel cycle.

V = POSTED 40 mph or less.

W = medical.

2 = 249cc or less motorcycle.

3 = 649cc or less motorcycle.

4 = Street legal ATV only.

KEY: classified license, licensing

Date of Enactment or Last Substantive Amendment: ~~1989~~2008

Notice of Continuation: August 25, 2004

Authorizing, and Implemented or Interpreted Law: 53-3-401 et seq.

◆ ————— ◆

Public Safety, Driver License R708-16 Pedestrian Vehicle Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31437

FILED: 05/15/2008, 13:45

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule needed to be changed to comply with the definition of a pedestrian vehicle as stated in Section 41-6a-1011. Using golf carts as a pedestrian vehicle does not comply with the statute. The fee for getting a pedestrian vehicle license was increased two years ago by the legislature from \$5 to \$13 to cover processing costs. The rule was changed to reflect the new cost.

SUMMARY OF THE RULE OR CHANGE: The changes make the rule become compliant with the statute and increase the processing fee.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-6a-1011

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no significant impact on the budget because there are few pedestrian vehicle permits that are issued.

❖ LOCAL GOVERNMENTS: There is no fiscal impact on local government because they are not involved in issuing pedestrian vehicle permits.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There will be no impact on small businesses because they are not involved in issuing pedestrian vehicle permits.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only compliance cost for individuals is to pay an additional \$8 for the permit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses because of these changes. Scott T. Duncan, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Nannette Rolfe, Director

R708. Public Safety, Driver License.

R708-16. Pedestrian Vehicle Rule.

R708-16-3. Application and Requirements for Authorization to Operate a Pedestrian Vehicle.

(1) Application for authorization to operate a pedestrian vehicle shall be made at any field office of Driver License Division and shall require the following:

(a) Name, age and D.O.B., sex, address, description of disability.

(b) Type of pedestrian vehicle to be used ~~[which must be approved on the basis of the disability; i.e., golf cart type vehicle, three-wheel vehicle, four-wheel vehicle.]~~ must comply with the requirements specified in Section 41-62-1011.

(c) Statement of intended use of the pedestrian vehicle. Intended use should not create an undue safety hazard.

(d) A functional ability evaluation and a medical opinion that physical disability would not affect the safe operation of the pedestrian vehicle.

(e) All applicants must sign a waiver accepting all responsibility for being allowed to operate a pedestrian vehicle.

(f) Any physically disabled person, under the age of 18, must have parental or guardian approval and sign a waiver accepting responsibility for being allowed to operate a pedestrian vehicle.

(g) Each individual making application for use of a pedestrian vehicle must demonstrate his/her ability to safely operate the pedestrian vehicle.

(2) Authorization to operate a pedestrian vehicle shall be in the form of a certificate issued by the department.

(3) Operation of pedestrian vehicles must comply with all

pedestrian, bicycle, or vehicle traffic laws as applicable to the type of pedestrian vehicle used. This includes lighting requirements if used during hours of darkness.

(4) The department may inspect intended routes and uses of vehicles and apply restrictions on use of pedestrian vehicles as may be necessary for the preservation of public safety.

(5) Authorization to operate a pedestrian vehicle must be reviewed every five years.

R708-16-5. Fee.

(1) The department may charge a [~~\$5.00~~]\$13 fee to cover administrative costs of issuing a permit to operate a pedestrian vehicle.

(2) All fees collected for permits shall remain in the department as a dedicated credit.

KEY: traffic regulations

Date of Enactment or Last Substantive Amendment: [~~September 19, 1996~~]2008

Notice of Continuation: March 23, 2006

Authorizing, and Implemented or Interpreted Law: 41-6a-1011



Public Safety, Driver License
R708-30-10
Certificate of Course Completion

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31435

FILED: 05/15/2008, 13:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The division has made two changes to this rule. First as per H.B. 72, a person can now waive their two-month motorcycle learner permit waiting period if they have successfully completed an approved motorcycle course and they are under the age of 19.

Second, because there has been a dramatic increase in motorcycle accidents and fatalities, the division has created new motorcycle restrictions as per Section 53-3-208. Based upon the size of the motorcycle that was used during the motorcycle test, the applicant will receive a restriction that will only allow them to ride that size or a smaller motorcycle. If they want to ride a larger motorcycle, they will have to be re-tested on a larger bike and receive a new restriction. (DAR NOTE: H.B. 72 (2008) is found at Chapter 304, Laws of Utah 2008, and will be effective 07/01/2008.)

SUMMARY OF THE RULE OR CHANGE: The changes were made to increase the safety in riding motorcycles.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-3-903

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no increase in the state budget because these were procedural changes that do not affect our testing procedures.

❖ LOCAL GOVERNMENTS: There is no impact on local government because they are not involved in issuing motorcycle permits.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no impact on small businesses because they are not involved in issuing motorcycle permits.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost because it is not mandatory to take a motorcycle training course or get a motorcycle.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses because of these changes. Scott T. Duncan, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: Nannette Rolfe, Director

R708. Public Safety, Driver License.

R708-30. Motorcycle Rider Training Schools.

R708-30-10. Certificate of Course Completion.

(1) The school will provide a certificate of course completion to verify rider competency and successful completion of the prescribed course of instruction.

(2) The certificate of course completion shall include the following:

- (a) applicant's name;
- (b) title of the course completed;
- (c) date of course completion; and
- (d) authorized signature from the school.

(3) Upon completion of a beginner class from an approved school, the division may waive the practical skills portion of the application for motorcycle license or endorsement to a current driver license.

(4) Riders must submit to the division the certificate of course completion of a beginner class within six months of the date of course completion to be eligible for waiver of the practical skills test. The rider will be restricted based on the cc size of the motorcycle tested on. The instructor shall write the engine size in cc format on the certificate.

(5) Upon successful completion of the class from an approved school, the division may waive the two month motorcycle learner permit holding period for riders under the age of 19.

KEY: motorcycle rider training schools

Date of Enactment or Last Substantive Amendment: ~~May 18, 1999~~ **2008**

Notice of Continuation: January 27, 2004

Authorizing, and Implemented or Interpreted Law: 53-3-903



End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends July 1, 2008. At its option, the agency may hold public hearings.

From the end of the waiting period through September 29, 2008, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303; and Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

**Commerce, Occupational and
Professional Licensing
R156-71
Naturopathic Physician Practice Act
Rules**

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 30854
Filed: 05/12/2008, 08:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Following a public hearing and comments received by the Division, additional amendments are being proposed to this rule. A new section (Section R156-69-302a) to the rule is also being proposed to identify an education credentialing service for naturopathic physician programs or schools located outside of the United States as was required in S.B. 56 which passed during the 2008 General Session of the Legislature and amended the governing statute, Title 58, Chapter 71. (DAR NOTE: S.B. 56 (2008) is found at Chapter 238, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: Section R156-71-202 changes are made with respect to antibacterials, antifungals, skeletal muscle relaxants, excluding scheduled medications, corticosteroids, and antigout and bone-resorption inhibitors in the naturopathic physician formulary. Subsection R156-71-202(3) was rewritten. New Section R156-71-302a was added to identify the education credentialing service for naturopathic physician programs or schools located outside of the United States. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the January 15, 2008, issue of the Utah State Bulletin, on page 6. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-71-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** The Division will not incur any additional costs beyond those previously identified in the original rule filing.
- ❖ **LOCAL GOVERNMENTS:** These additional proposed amendments do not apply to local governments. The proposed amendments only apply to licensed naturopathic physicians and applicants for licensure as a naturopathic physician.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Small businesses and persons: The additional proposed amendments only apply to licensed naturopathic physicians,

which may qualify as a small business, and applicants for licensure as a naturopathic physician. The additional proposed amendments with respect to the naturopathic physician formulary will not cause any additional costs or savings beyond those previously identified in the original rule filing. The amendment identifying the education credentialing service would only apply to applicants for licensure as a naturopathic physician by endorsement who had completed their education at a naturopathic program or school located outside of the United States. For these applicants, there is an approximate cost of \$200 to have their education reviewed by the credentialing service. The Division only licenses one or two naturopathic physicians per year for an aggregate cost of \$400 and it only applies to an applicant for licensure if the naturopathic program or school they completed is located outside of the United States.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The additional proposed amendments only apply to licensed naturopathic physicians and applicants for licensure as a naturopathic physician. The additional proposed amendments with respect to the naturopathic physician formulary will not cause any additional costs or savings beyond those previously identified in the original rule filing. The amendment identifying the education credentialing service would only apply to applicants for licensure as a naturopathic physician by endorsement who had completed their education at a naturopathic program or school located outside of the United States. For these applicants, there is an approximate cost of \$200 to have their education reviewed by the credentialing service.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change in proposed rule clarifies certain categories in the naturopathic formulary and implements a recent statutory change. Therefore, no fiscal impact to businesses is anticipated. Francine A. Giani, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Diana Baker at the above address, by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at dbaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2008

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-71. Naturopathic Physician Practice Act Rule.**

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R156-71-202. Naturopathic Physician Formulary.

(1) In accordance with Subsections 58-71-102(8), 58-71-102(12)(a) and 58-71-202, the naturopathic physician formulary which consists of noncontrolled substance legend medications deemed appropriate for the primary health care of patients within the scope of practice of naturopathic physicians, the prescription of which is approved by the Division in collaboration with the Naturopathic Formulary Advisory Peer Committee, consists of the following legend drugs, listed by category, with reference numbers identified in the American Hospital Formulary Service (AHFS), published by the American Society of Health System Pharmacists, 2006 edition:

- 4:00 Antihistamines
- 8:08 Antihelminthics
- 8:12 Antibacterials, oral forms only
- 8:14 Antifungals, oral and topical forms
- 8:18 Antivirals limited to oral and topical dosage forms, excluding:
 - 8:18:08 Antiretrovirals
 - 8:18:20 Interferons
 - 8:18:24 Monoclonal Antibodies
 - 8:18:32 Nucleosides and Nucleotides
 - 8:30:04 Amebicides
 - 8:30:92 Miscellaneous Antiprotozoals excluding those whose primary indication is the treatment of infection in immunosuppressed patients (i.e. Pentamidine and Trimetrexate)
- 8:36 Urinary anti-infectives
 - 12:12:08:12 Selective Beta 2 Adrenergic Agonists
 - 12:12:12 Alpha and Beta Adrenergic Agonists
 - 12:16 Sympatholytic (Adrenergic Blocking) Agents, limited to ergot derivatives
- 12:20 Skeletal Muscle Relaxants, excluding scheduled medications
 - 20:24 Hemorrhologic Agents
 - 24:04:08 Cardiogenic agents - limited to Digoxin
 - 24:06 Antilipemic Agents
 - 24:08 Hypotensive Agents - limited to oral dosage forms
 - 24:20 Alpha Adrenergic Blocking Agents
 - 24:24 Beta Adrenergic Blocking Agents - limited to oral dosage forms
 - 24:28 Calcium Channel Blocking Agents - limited to oral dosage forms
 - 24:32 Renin-Angiotensive-Aldosterone System Inhibitors - limited to oral dosage forms
 - 28:08 Analgesics and Antipyretics, excluding scheduled medications
 - 28:16.04.20 Selective-Serotonin Reuptake Inhibitors
 - 28:16.04.24 Serotonin Modulators
 - 28:16.04.28 Tricyclics and Other Norepinephrine-Reuptake Inhibitors
 - 40:00 Electrolytic, caloric, and water balance
 - 40:28 Diuretics
 - 44:00 Enzymes, limited to digestive and proteolytic
 - 52:08 Corticosteroids (oral, ~~or~~ topical, and injectable), Anti-Inflammatory Agents except Ophthalmologic Preparations, and DMARDS

- 52:16 Local Anesthetics
- 56:22 Antiemetics
- 56:28 H2 Blockers, Anti-ulcer agents and Acid Suppressants
- 68:12 Contraceptives, except implants and injections
- 68:16.04 Estrogen
- 68:20.02 Alpha-Glucosidase Inhibitors
- 68:20.08 Insulins and Biguanides
- 68:20.20 Sulfonylureas
- 68:24 Parathyroid
- 68:32 Progesterin
- 68:36.04 Thyroid agents, including thyroid of glandular extract
- 88:28 Multivitamin preparations
- 92:00 Antigout, and Bone-Resorption Inhibitors, limited to Raloxifene, and botulinum toxin type A, limited to superficial injections

(2) In addition, amino acids, minerals, oxygen and silver nitrate, although not listed in Subsection (1), are approved for primary health care.

(3) ~~[A naturopathic physician shall not prescribe or administer any medications not listed in Subsections (1) and (2), unless the naturopathic physician first submits a request for approval to the Division and the Naturopathic Formulary Peer Committee and obtains such approval.]~~ New categories or classes of drugs will need to be approved as part of the formulary prior to prescribing/administering.

(4) The licensed naturopathic physician has the responsibility to be knowledgeable about the medication being prescribed or administered.

.....

R156-71-302a. Qualifications for Licensure - Education Requirements for Graduates of Naturopathic Physician Programs or Schools Located Outside the United States.

The satisfactory documentation of compliance with the licensure requirement set forth in Subsection 58-71-302(2)(b) shall be a report submitted to the Division by the International Credentialing Associates, Inc. (ICA) confirming that the applicant's naturopathic physician program or school has met the accreditation standards.

.....

KEY: licensing, naturopaths, naturopathic physician
Date of Enactment or Last Substantive Amendment: 2008
Notice of Continuation: January 8, 2007
Authorizing, and Implemented or Interpreted Law: 58-71-101; 58-1-106(1)(a); 58-1-202(1)(a)

◆ ————— ◆

Community and Culture, Indian Affairs
R230-1
Native American Grave Protection and Repatriation

NOTICE OF CHANGE IN PROPOSED RULE
 DAR File No.: 30912
 Filed: 05/15/2008, 16:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Received public comment that added substantively to the original proposed amendment to Rule R230-1 amendments regarding the implementation and process of the repatriation of ancient American Indian human remains. Therefore, this change in proposed rule is filed.

SUMMARY OF THE RULE OR CHANGE: Clarification was made to the proposed responsibilities of state agencies regarding the determination of lineal descent, cultural affiliation, and aboriginal land claims of ancient American Indian human remains. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the February 1, 2008, issue of the Utah State Bulletin, on page 12. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 9-9-104, 9-9-403, and 9-9-405

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no anticipated cost or savings to the state budget due to these proposed changes beyond those described in the original amendment.
- ❖ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local governments due to these proposed changes beyond those described in the original amendment.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no anticipated cost of savings to small businesses and any other person due to these proposed changes beyond those described in the original amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated compliance cost for any affected person due to these proposed changes beyond those described in the original amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact upon businesses due to these proposed changes beyond those described in the original amendment. Palmer DePaulis, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMUNITY AND CULTURE
 INDIAN AFFAIRS
 Room 103
 324 S STATE ST
 SALT LAKE CITY UT 84111-5223, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Rebecca Nelson at the above address, by phone at 801-538-8767, by FAX at 801-538-8888, or by Internet E-mail at rebeccanelson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/11/2008

AUTHORIZED BY: Forrest S Cuch, Director

R230. Community and Culture, Indian Affairs.

R230-1. Native American Grave Protection and Repatriation.

R230-1-1. General Policy Statement Regarding Native American Burials.

1. Native American burials are regarded as spiritual and sacred ceremonies where the deceased is prepared for their journey into the next dimension of life. Once the deceased, the grave and the funerary objects are blessed, consecrated and dedicated to the care and keeping of the creator the burial site is then considered "~~holy~~sacred ground[;]"~~[-never to be disturbed]~~.

2. Native American burial sites discovered on state lands or non-federal lands must not be disturbed except as allowed by this rule and other applicable law. Any disturbances that are allowed should be conducted in a manner that minimizes desecration of the site.

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R230-1-4. Definitions.

1. Terms used in this rule are defined in Section 9-9-402.
2. In addition, as used in this rule "agency" means the state agency having primary management authority over the land or state repository, including museums, where Native American remains are found.
3. "Committee" means the Native American Remains Review Committee.
4. "Director" means the Director of the Division of Indian Affairs.
5. "Division" means the Division of Indian Affairs.
6. "Scientific testing" means physical or chemical tests such as radiocarbon dating and DNA analysis, performed by a qualified technician to determine the age, ethnicity or any other pertinent information.
7. "Lineal descendant" means the genealogical descendant established by oral or written record or other evidence.
8. "Cultural affiliation" means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe and an identifiable earlier group.
9. "State land" as defined by 9-9-402.
10. "Nonfederal land" as defined by 9-9-402.

.....

R230-1-6. Ascertaining Lineal Descendents and Cultural Affiliation.

1. Each agency, in consultation with Antiquities Section, Utah Division of State History, shall compile an inventory of acquired ancient human remains ~~[and funerary objects,]~~ and report updates of the inventory to the Committee biannually until such time as the remains have been determined to be unclaimed, unaffiliated, or placed in the burial vault.

a. The inventory shall identify the lineal descent, cultural affiliation, and geographic location of the remains to the extent possible, and upon completion, the inventory shall be sent to the Director to disseminate to the Committee, Indian tribes, and all interested parties.

b. The inventory of lineal descent and cultural affiliation shall be completed in consultation with appropriate tribes and tribal government representatives, which consultation shall be coordinated and facilitated by the Division.

2. The agency shall have one year from date of discovery to complete research for an assessment of lineal descent or cultural affiliation.

a. The documentation for the inventory can consist of existing agency records, relevant studies, other pertinent data for determining lineal descent, the cultural affiliation, geographical origin, and basic facts surrounding the acquisition of ancient human remains.

b. Evidence of a lineal descendant or cultural affiliation to ancient human remains shall be established by using the following types of evidence: kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, geographical, or other relevant information or expert opinion.

3. Lineal descent and cultural affiliation assessments shall be established by a preponderance of the evidence. Agencies do not have to establish lineal descent or cultural affiliation with scientific certainty.

4. If an agency has made a good faith effort to consult and identify the remains, but has been unable to complete the process within the one year time frame, the agency may appeal to the Committee for an extension. The Committee may grant an extension upon findings of good faith effort.

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R230-1-17. Savings Provision.

~~[1. Nothing in these Rules shall prevent an Indian tribe from making a claim based upon aboriginal land which the authority to decide validity and sufficiency of claims shall rest with the Director.]~~
If, following the conclusion of the process to determine ownership of human remains using lineal descent and cultural affiliation, an owner cannot be identified by the responsible agency, tribes may submit claims based on aboriginal land to the Division. The Director shall make a determination of ownership based upon findings of the Committee and in consultation with the landowner.

KEY: Indian affairs, state lands, Native American remains

Date of Enactment or Last Substantive Amendment: 2008

Notice of Continuation: January 31, 2006

Authorizing, and Implemented or Interpreted Law: 9-9-104; 9-9-403; 9-9-405

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End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by Section 63G-3-305.

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-5** Reduction in Hospital Payments

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 31424
FILED: 05/13/2008, 10:22

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. In addition, Section 26-18-7 grants the Department of Health the authority to establish rates for hospital payments. Furthermore, 42 CFR 447.21 grants the Department the authority to reduce payments to providers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it allows for a reduction in hospital payments and reimbursements that have been set by Medicaid. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 05/13/2008



Natural Resources, Wildlife Resources **R657-34**

Procedures for Confirmation of Ordinances on Hunting Closures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 31398
FILED: 05/08/2008, 14:54

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 23-14-1(3)(b) states: "Communities may close areas to hunting for safety reasons after confirmation by the Wildlife Board." This rule provides the standards and procedures for how a political subdivision within a community may obtain confirmation from the Wildlife Board to close an area to hunting for reasons of safety.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-34 were received since 05/14/2003, when the rule was last reviewed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-34 is necessary to provide the procedures for a political subdivision within a

community to obtain confirmation from the Wildlife Board to close an area to hunting for reasons of safety. The provisions adopted in this rule are effective. Continuation of this rule is necessary to provide the standards and procedures for obtaining confirmation from the Wildlife Board.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James F Karpowitz, Director

EFFECTIVE: 05/08/2008



Natural Resources, Wildlife Resources
R657-37
Cooperative Wildlife Management Units
for Big Game or Turkey

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR FILE No.: 31401
FILED: 05/08/2008, 15:17

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Section 23-23-3, the Wildlife Board is authorized to provide the standards and procedures applicable to Cooperative Wildlife Management units organized for the hunting of big game or turkey.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-37 were received since 05/14/2003, when the rule was last reviewed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-37 is established for setting the standards and procedures applicable to Cooperative Wildlife Management units for big game or turkey. The provisions adopted in this rule are effective in increasing wildlife resources, providing income to landowners, providing the general public access to private and public lands for hunting big game or turkey, creating satisfying hunting

opportunities, and providing adequate protection to landowners who open their lands for hunting. Continuation of this rule is necessary for success with this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James F Karpowitz, Director

EFFECTIVE: 05/08/2008



Natural Resources, Wildlife Resources
R657-42
Fees, Exchanges, Surrenders, Refunds
and Reallocation of Wildlife Documents

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR FILE No.: 31400
FILED: 05/08/2008, 14:58

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-19-1 and 23-19-38, the Division under authorization from the Wildlife Board is required to issue wildlife documents along with providing the standards and procedures for the exchange permits, surrender of wildlife documents, refund of wildlife documents, reallocation of permits, and assessment of late fees.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-42 were received since 05/14/2003, when the rule was last reviewed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-42 is established for setting the standards and procedures for exchanges, surrenders, refunds, and reallocations of wildlife permits. The provisions adopted in this rule are effective in maintaining a set practice of guidelines assuring continuity and consistency in handling circumstances pertaining to exchanges,

surrenders, refunds, reallocations, and late fees. Continuation of this rule is necessary for success with this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James F Karpowitz, Director

EFFECTIVE: 05/08/2008

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Natural Resources, Wildlife Resources
R657-45
Wildlife License, Permit, and Certificate
of Registration Forms

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE No.: 31399
FILED: 05/08/2008, 14:56

NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-14-19 and 23-19-2, the Wildlife Board is authorized and required to prescribe the form of a wildlife license, permit, and certificate of registration.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-45 were received since 05/14/2003, when the rule was last reviewed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-45 is established for prescribing the forms of a wildlife license, permit, and certificate of registration. The provisions adopted in this rule are effective in prescribing the form of a license, permit, and certificate of registration. Continuation of this rule is necessary for prescribing the form of a license, permit, and certificate of registration.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James F Karpowitz, Director

EFFECTIVE: 05/08/2008

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Public Safety, Criminal Investigations
and Technical Services, Criminal
Identification
R722-320
Undercover Identification

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE No.: 31434
FILED: 05/14/2008, 19:35

NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53-10-104 addresses the duties of the division, including the statutory mandate to provide assistance and specialized law enforcement services to federal, local, and state agencies as authorized by Subsections 53-10-104(1), 53-10-104(9), and 53-10-104(14).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it informs law enforcement agencies regarding the criteria and procedure used by the division in obtaining identification and personal history information for their peace officers who conduct undercover investigations. There are certain contents of this rule that need to be updated and will be done soon.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS
AND TECHNICAL SERVICES,
CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE UT 84118, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Alice Erickson at the above address, by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov

AUTHORIZED BY: Scott T Duncan, Commissioner

EFFECTIVE: 05/14/2008

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS
AND TECHNICAL SERVICES,
CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE UT 84118, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Alice Erickson at the above address, by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov

AUTHORIZED BY: Scott T Duncan, Commissioner

EFFECTIVE: 05/14/2008

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**Public Safety, Criminal Investigations
and Technical Services, Criminal
Identification
R722-340
Emergency Vehicles**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 31433
FILED: 05/14/2008, 19:22

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 41-6a-310 and Subsection 53-1-108(1)(c)(ii) authorize the commissioner of public safety to make rules governing emergency use of signal lights on private vehicles and allowing privately-owned vehicles to be designated for part-time emergency use.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it informs the public regarding the criteria and procedure followed by the department in designating privately-owned vehicles for part-time emergency use.

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**Regents (Board Of), Administration
R765-605
Utah Centennial Opportunity Program
for Education**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 31402
FILED: 05/09/2008, 10:18

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 53B, Chapter 13a specifically created this program. Definitions are included in Sections 53B-8-102 and 53B-8-106.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received during the past five-year-review period nor since that date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule supports administration of the Utah Centennial Opportunity Program for Education grant that enables many Utah students to attend college in Utah. The state legislature appropriates money for this program that is then awarded as financial aid on a need basis. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY UT 84101-1284, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ronell Crossley at the above address, by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

AUTHORIZED BY: David Buhler, Interim Commissioner

EFFECTIVE: 05/09/2008

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Regents (Board Of), Administration
R765-606
Utah Leveraging Educational
Assistance Partnership Program

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE No.: 31405
FILED: 05/09/2008, 11:10

NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53B-7-103 designates the Board of Regents as the state agency authorized to negotiate and contract with the federal

government and to accept financial or other assistance from the federal government or any of its agencies in the name of and in behalf of the state of Utah. This rule directly governs the administration of one of the federal student financial aid programs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received during the last five-year review or since that time.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary to govern the State's administration of and the ongoing federal disbursements from the Leveraging Educational Assistance Partnership Program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY UT 84101-1284, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ronell Crossley at the above address, by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

AUTHORIZED BY: David Buhler, Interim Commissioner

EFFECTIVE: 05/09/2008

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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by Subsection 63G-3-305(4) and (5).

Environmental Quality

Air Quality

No. 31426: R307-107. General Requirements: Unavoidable Breakdown.

ENACTED OR LAST REVIEWED: 06/12/2003 (No. 26367, 5YR, filed 06/12/2003 at 1:48 p.m., published 07/01/2003).

EXTENDED DUE DATE: 10/10/2008

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. Statute permits an agency to make a rule effective "on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period . . . , nor more than 120 days after the publication date." Subsection 63G-3-301(9).

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Commerce

Occupational and Professional Licensing
No. 30915 (AMD): R156-61. Psychologist Licensing Act Rules.
Published: February 1, 2008
Effective: May 8, 2008

No. 30915 (CPR): R156-61. Psychologist Licensing Act Rules.
Published: April 1, 2008
Effective: May 8, 2008

Human Services

Child and Family Services
No. 31043 (NEW): R512-204. Child Protective Services, New Caseworker Training.
Published: April 1, 2008
Effective: May 8, 2008

Recovery Services
No. 31061 (AMD): R527-231. Review and Adjustment of Child Support Order.
Published: April 1, 2008
Effective: May 15, 2008

No. 31054 (AMD): R527-258. Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program.
Published: April 1, 2008
Effective: May 14, 2008

Insurance

Administration
No. 31030 (AMD): R590-164. Uniform Health Billing Rule.
Published: March 15, 2008
Effective: May 8, 2008

Natural Resources

Wildlife Resources
No. 31053 (AMD): R657-3. Collection, Importation, Transportation, and Possession of Zoological Animals.
Published: April 1, 2008
Effective: May 8, 2008

No. 31048 (AMD): R657-13-3. Fishing License Requirements and Free Fishing Day.
Published: April 1, 2008
Effective: May 8, 2008

No. 31049 (AMD): R657-42-8. Accepted Payment of Fees.
Published: April 1, 2008
Effective: May 8, 2008

No. 31050 (AMD): R657-45-2. Information Listed on the License, Permit, and Certificate of Registration Forms.
Published: April 1, 2008
Effective: May 8, 2008

No. 31051 (AMD): R657-53. Amphibian and Reptile Collection, Importation, Transportation, and Possession.
Published: April 1, 2008
Effective: May 8, 2008

End of the Notices of Rule Effective Dates Section

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2008, including notices of effective date received through May 15, 2008, the effective dates of which are no later than June 1, 2008. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the Bulletin and related publications; we hope to have them resolved as soon as possible. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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R123-3-2	Designation	31260	NSC	05/05/2008	Not Printed
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R746-330	Rules for Water and Sewer Utilities Operating in Utah	31044	5YR	03/07/2008	2008-7/66
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R746-347	Extended Area Service (EAS)	31045	5YR	03/07/2008	2008-7/66
R746-349-3	Filing Requirements	31374	NSC	05/05/2008	Not Printed
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R765-136	Language Proficiency in the Utah System of Higher Education.	31490	5YR	05/27/2008	Not Printed
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R765-607	Utah Higher Education Tuition Assistance Program	30957	5YR	02/08/2008	2008-5/60
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R810-3	Visitor Parking	30727	REP	03/06/2008	2007-24/21
R810-4	Registration Policies	30728	REP	03/06/2008	2007-24/22
R810-5	Permit Types, Eligibility and Designated Parking Areas	30779	AMD	03/06/2008	2007-24/23
R810-6	Permit Prices and Refunds	30809	AMD	03/06/2008	2008-1/26
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R810-10	Enforcement System	30839	AMD	03/06/2008	2008-1/30
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R859-1-302	Renewal Cycle - Procedure	31029	AMD	05/01/2008	2008-6/16
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R861-1A-40	Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611	30838	AMD	02/25/2008	2008-1/32
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R865-6F-37	Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309	30842	AMD	02/25/2008	2008-1/35
R865-9I-37	Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 63-38f-401 through 63-38f-414	30916	AMD	03/14/2008	2008-3/63
R865-9I-53	Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309	30849	AMD	02/25/2008	2008-1/36
R865-19S-121	Sales and Use Tax Exemptions for Certain Purchases by a Mining Facility Pursuant to Utah Code Ann. Section 59-12-104	30841	AMD	02/25/2008	2008-1/37
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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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	31201	R641-116	NSC	05/05/2008	Not Printed
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	31269	R652-8	NSC	05/05/2008	Not Printed
	31110	R652-9-100	NSC	05/01/2008	Not Printed
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	30959	R307-101	5YR	02/08/2008	2008-5/40
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	30701	R307-221	AMD	02/08/2008	2007-23/32
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	30832	R307-221-2	NSC	02/08/2008	Not Printed
	30702	R307-222	AMD	02/08/2008	2007-23/36
	30967	R307-222	5YR	02/08/2008	2008-5/44
	30833	R307-222-1	NSC	02/08/2008	Not Printed
	30703	R307-223	AMD	02/08/2008	2007-23/38
	30968	R307-223	5YR	02/08/2008	2008-5/45
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	30704	R307-224-2	AMD	02/08/2008	2007-23/39
	30970	R307-250	5YR	02/08/2008	2008-5/46
	30971	R307-310	5YR	02/08/2008	2008-5/46
	30705	R307-310-2	AMD	02/08/2008	2007-23/40
	30709	R307-401-14	AMD	02/08/2008	2007-23/42
	30431	R307-405	AMD	01/11/2008	2007-19/15
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	30707	R307-801	AMD	02/08/2008	2007-23/45
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	31246	R616-2	NSC	05/05/2008	Not Printed
	30943	R616-3-3	AMD	03/24/2008	2008-4/21
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	31178	R156-40-302e	NSC	05/05/2008	Not Printed
	30853	R156-47b	AMD	02/21/2008	2008-2/4
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	31374	R746-349-3	NSC	05/05/2008	Not Printed
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	30771	R994-508	AMD	02/15/2008	2007-24/30
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	31071	R994-508-118	NSC	04/14/2008	Not Printed
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